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Timothy Borders et al.,
Petitioners,
v.
King County et al.,
Respondents,
and
Washington State Democratic Central
Committee,
Intervenor-Respondent.

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE'S
OPPOSITION TO PETITIONERS'
MOTION IN LIMINE TO EXCLUDE
EVIDENCE CONCERNING
PREVIOUSLY REJECTED BALLOTS
AND OTHER "OFFSETTING ERRORS"

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I. INTRODUCTION

Petitioners' Motion in Limine to Exclude Evidence Concerning Previously Rejected Ballots and Other "Offsetting Errors" ("Motion") is – if taken at face value – moot.

Petitioners state that the "subject of this motion" is not "error that does not involve second guessing a discretionary decision." Motion at 2, n.2. The Motion is based on the premise that Intervenor-Respondent Washington State Democratic Central Committee ("WSDCC") intends to challenge county election officials' discretionary decisionmaking over signature mismatches. WSDCC does not intend to do so. Given Petitioners' limitation of their Motion, it should be denied without further ado.

Despite the limitation in the Motion, Petitioners' Proposed Order – if granted – would exclude *all* evidence from WSDCC of election official error in failing to perform the duties required by law. Proposed Order at 2. Presumably, Petitioners seek this relief because those failures and the resulting illegal votes benefited Petitioners' candidate. WSDCC has repeatedly stated that it intends to balance the record at trial and show offsetting "illegal votes" (as to Petitioners' claims under RCW 29A.68.110) and offsetting election official error (as to Petitioners' claims under RCW 29A.68.011). This comes as no surprise to Petitioners. Petitioners seek a trial in which the Court looks only at selected issues cherry-picked by the Rossi for Governor Campaign rather than receiving a balanced view of whether errors and illegal votes actually changed the outcome of the Governor's election as required by Washington's election contest statutes. The Motion should be denied.

II. FACTUAL BACKGROUND

A. WSDCC Does Not Intend to Introduce Evidence Regarding Ballots Rejected Due to Mismatched Signatures.

Contrary to Petitioners' assertions, the WSDCC does not intend to introduce evidence in this contest of ballots that were rejected in the 2004 general election as a result of a comparison by election officials of signatures and a resulting conclusion that the signatures did not match. Declaration of William C. Rava ("Rava Decl.") ¶ 2. WSDCC does not believe it has ever said that, at trial, it planned to ask this Court to order rejected ballots counted on the basis of this Court's review and re-do of actual signature comparisons by election officials.¹ WSDCC does believe that election officials in King County failed to compare signatures on some rejected ballots submitted by registered voters because they failed to include a copy of the signature in their voter registration database and could not find the voter's original registration card submitted by the voter at the time of his registration. *Id.* ¶ 3. WSDCC also believes that other errors may have led King County to reject provisional ballots without actually doing the signature comparison. *Id.* ¶¶ 3, 5-7. WSDCC intends to introduce evidence of any such errors that deprived people of their vote where those people had timely submitted their ballots and all required information to election officials.

¹ If it has made such a statement, it was in error (or in response to Petitioners' now-dismissed claim that this Court should allow voters to submit additional information to support their ballots submissions even after the November 16, 2004 deadline upheld by the Supreme Court in *McDonald v. Reed*, 152 Wn.2d 201, 205 (2004)). See Pet. ¶ VI.A.7 (equal protection claim alleging that King County erred in "its refusal to correct additional signature verification errors when presented with declarations from voters whose ballots had been mistakenly rejected"); see also Rava Decl. ¶ 20, Ex. R.

2 For example, based on evidence produced to WSDCC on Friday, April 15, 2005 (in
3 response to the Court's protective order decision regarding King County depositions), it
4 appears that over 200 ballots were rejected because King County failed to properly
5 investigate and verify the voter's registration record. *Id.* ¶ 5-7, Exs. B-D. To cite but three
6 examples, King County failed to count the votes of Leslie Marlow, Lydia Guerrero, and
7 Larri P. Robertson all of whom voted by provisional ballot. Notations on their ballots and
8 testimony from King County indicate that these votes should have been counted, but were
9 not:
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- 16 • Marlow: "Registered since 1995[,] sig[nature] matches in fail safe[,] vote not
17 counted." (emphasis in original). *Id.*, ¶ 5, Ex. B.
- 18 • Guerrero: "Voter is registered & in fail safe as Lydie Guerrero[.] Based on
19 handwriting it was easy to mistake 'a' for 'e'[.] Voter registered in person 10-
20 14-04[.] Vote didn't count." *Id.* ¶ 5, 7, Ex. B, D.
- 21 • Robertson: King County Elections Director Dean Logan testified that it was
22 "correct" that King County error caused this ballot not to be counted. *Id.*, ¶ 7,
23 Ex. D.²
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29 It is these ballots that WSDCC's contends were "wrongly rejected" and was the subject of
30 WSDCC's April 7, 2005 letter that Petitioners misinterpret as referring to ballots rejected
31 due to mismatched signatures. Koziak Decl. ¶ 3, Ex. B. And it is these types of non-
32 discretionary errors, where election officials failed to discharge their duty to investigate, that
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41 ² It is this category of ballots, where King County did not properly investigate registration
42 signatures that Petitioners mistakenly confuse with revisiting ballots rejected because of signature
43 mismatches. Declaration of Amy Koziak in Support of Petitioners' Motion in Limine to Exclude
44 Evidence Concerning Previously Rejected Ballots and Other "Offsetting Errors" ("Koziak Decl.")
45 ¶ 4, Ex. C (Gregory Roberts, *Seattle Post Intelligencer*, "Democrats still looking for votes-just in
46 case," March 18, 2005 at 2) (identifying "cases of 208 voters whose ballots were excluded under the
47 category 'not registered, needed further research'" as focus of WSDCC's investigative efforts).

2 WSDCC intends to present at trial.³ WAC 434-253-047 ("Upon receipt of the provisional
3 ballot, including provisional ballots from other counties or states, the auditor *must*
4 *investigate* the circumstances surrounding the provisional ballot prior to certification of the
5 primary or election.") (emphasis added).
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9 Petitioners' Motion is focused on whether WSDCC may introduce evidence of
10 ballots rejected due to mismatched signatures. The Motion is peppered with references to
11 this specific type of evidence. *See, e.g.*, Motion at 1 ("signature mismatches"), at 2 ("reject
12 the ballots at issue for signature mismatches"), at 3 ("discretionary decisions about signature
13 mismatches"), and at 4 ("claims regarding mismatched signatures"). Petitioners' Proposed
14 Order goes much further and seeks exclusion of, "All evidence regarding ballots that were
15 previously rejected by election officials," and "All evidence regarding other errors alleged by
16 Intervenor to offset errors alleged by Petitioners." Proposed Order at 2 (emphasis added).
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25 **B. WSDCC Intends to Present Evidence of Election Official Error In**
26 **Accepting Votes Without Completing Verification and Illegal Votes to**
27 **Offset Similar Evidence Offered by Petitioners.**
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29 In addition, WSDCC will present evidence of offsetting "illegal votes" and offsetting
30 election official error. For example, in at least four Eastern Washington counties that
31 heavily favored the contestant Dino Rossi – Adams, Stevens, Walla Walla, and Whitman –
32 election officials unlawfully counted provisional ballots without first verifying them as
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43 ³ Similarly, in a December 15, 2004 email, King County elections worker Travis Elsom, in
44 response to an inquiry from Dean Logan, identified three instances where errors in King County's
45 record keeping resulted in three voters' registrations wrongly being coded as cancelled, when those
46 voters were in fact properly registered. Rava Decl. ¶ 6, Ex. C. Dean Logan testified that it was a
47 "mistake" to cancel these registrations. *Id.* ¶ 7, Ex. D.

2 required by WAC 434-253-047.⁴ Rava Decl. ¶¶ 8-9, Exs. E-F (Declaration of Joshua C.
3 Jungman in Support of Petition for Mandamus (dated December 3, 2004) (identifying
4 counties that counted provisional ballots without having verified signatures)); (Gregory
5 Roberts, *Seattle Post-Intelligencer*, "Four counties admit voting mix-ups," April 1, 2005,
6 at 1). These illegal votes will offset any illegal votes proven by Petitioners, including
7 Petitioners' proposed evidence regarding 348 "provisional ballots cast directly into precinct
8 vote counters on election day[,] . . . [which] constitutes error, neglect, and misconduct by
9 elections officials under RCW 29A.68.020(1) and/or 29A.68.011." *Id.* ¶ 10, Ex. G (April
10 15, 2005 Declaration of David Bowman in support of Petitioners' final list of "votes being
11 contested," Ex. 7). As their Motion makes clear, Petitioners also intend to present evidence
12 of election official error that they contend resulted in valid votes not being counted. Motion
13 at 2, n.1 (identifying a "failure to count valid absentee ballots").⁵

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Petitioners do not contend that the election official error evidence that WSDCC
intends to offer is per se inadmissible – simply that this evidence can't be admitted if it hurts
their case. Indeed, in statements to the media, Mr. Rossi's attorney has said that Petitioners
do not intend to offer a balanced presentation of errors or illegal votes – only those that
favor Dino Rossi. Rava Decl. ¶ 11, Ex. H (David Postman, *Seattle Times*, "Democrats
search for errors in GOP land," April 18, 2005 at 2) ("In any court case, you present the
evidence that favors you," [Rossi's attorney] said. "There's no obligation in court to present

⁴ WAC 434-253-047 states, in relevant part: "A provisional ballot cannot be counted unless
the voter's name, signature and the date of birth, if available, matches a voter registration record."

⁵ WSDCC's discussion of Petitioners' anticipated evidence in this Opposition is for
identification purposes only, and is not to be construed as a waiver of any objections to that evidence
that WSDCC may raise at trial or otherwise.

all the evidence that helps or hurts you. This is an adversarial system."). Like WSDCC, Petitioners have stated that they intend to challenge very similar "error[s] that do[] not involve second guessing a discretionary decision," except, of course, their focus will be on errors that they anticipate will benefit Dino Rossi. Motion at 2, n.1. It is no secret that Petitioners have focused their election contest on King County, in which Governor Gregoire ran far ahead of Dino Rossi.

C. WSDCC Has Provided Complete Discovery Responses, Based on The Information Provided by Counties to Date.

WSDCC has provided, based on the information available to it thus far, detailed responses to discovery requests describing the types of errors and the nature of illegal votes that it intends to prove at trial. Rava Decl. ¶ 12, Ex. I. (WSDCC's Responses to Secretary of State's Interrogatories and Requests for Production at 21, 30) (identifying specific counties where felons voted, counties where provisional ballots were counted without verifying signatures, and the specific number of those ballots in each county that has provided sufficient information to enable WSDCC to calculate the number at issue). WSDCC has also made plain in its discovery responses to Petitioners that it intends to present evidence of election official error and illegal votes at trial to offset Petitioners' evidence. *Id.* ¶ 13, Ex. J (WSDCC's Answer to Petitioners' Second Interrogatories Nos. 4 and 5) ("To date it is apparent that that to the extent there were Illegal Votes given to Gregoire, there were also at least as many, if not more Illegal Votes given to Rossi.") ("WSDCC is aware of the following instances in which error, neglect, or misconduct may have been committed in the 2004 General Election").⁶ WSDCC has supplemented its

⁶ For example, WSDCC's Answer to Petitioners' Interrogatory No. 6 of its Second Interrogatories and Requests for Production identifies the following errors: "(1) Certain provisional

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discovery responses to Petitioners at least eight times as it continues to receive additional
information needed to respond to Petitioners' discovery requests. *Id.* ¶ 14, Ex. K. In any
event, WSDCC will fully comply with the Proposed Order Regarding Pretrial Schedule
(signed by Petitioners) that permits WSDCC to provide its final list of illegal votes and
election official error on May 6, 2005. *Id.* ¶ 4.

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Petitioners' Motion makes vague reference to prejudice based on what they contend
are "evasive" and incomplete answers provided by WSDCC, Motion at 4, but WSDCC has
worked diligently to provide complete and accurate discovery responses based on
information available to it to date. *Id.* ¶ 14.⁷ Much of the information necessary to respond
to Petitioners' discovery requests is in the hands of the dozens of counties and auditors
dismissed from this lawsuit. Despite WSDCC's diligent efforts to obtain that information,
not every county has been forthcoming in providing prompt and full responses to WSDCC's
requests. *Id.* The most egregious example is Benton County.

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ballots were counted that should not have been counted (*see, e.g.* WSDCC's answers to
Interrogatories Nos. 11 and 16 in Petitioners' First Requests and an April 1 newspaper article in the
Seattle Post Intelligencer http://seattlepi.nwsource.com/local/218434_provisional01x.html); (2)
Certain absentee and/or provisional ballots were not counted that should have been (e.g. improperly
cancelled registrations); and (3) Ballots improperly cast in the name of deceased voters who have
admitted to the media that they voted in the Gubernatorial Election (all for Rossi). In addition,
WSDCC believes that certain counties may have committed error or neglect by failing to restore
rights to felons who had met all sentencing obligations and that felons without their civil rights
restored voted in the General Election (other than those identified by Petitioners to date)." Rava
Decl. ¶ 13, Ex. J.

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⁷ Petitioners have not moved to compel more complete discovery responses from WSDCC,
nor have they suggested that they intend to do so. Such a motion would lack merit, because WSDCC
has disclosed all documents and information in its possession, but continues to await complete
responses from various counties that possess information necessary to supplement WSDCC's
responses to Petitioners' requests. Rava Decl. ¶ 14.

2 WSDCC served Benton County with discovery requests on January 27, 2005, when
3 Benton County was still a party to this case. Declaration of Rebecca S. Engrav ("Engrav
4 Decl.") ¶ 2. On February 26, 2005, Benton County indicated that it would answer
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6 Petitioners' discovery requests and, if after reviewing those responses, WSDCC had
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8 additional questions it could contact the county. *Id.* ¶ 3. Counsel for WSDCC left messages
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10 with Benton County on March 8, 29, and April 1 to follow up on our discovery requests. *Id.*
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12 ¶ 4. On April 7, Benton County informed the WSDCC that it would not be responding to
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14 WSDCC's discovery requests because it was too busy. *Id.* ¶ 5. On April 8, 2005, WSDCC
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16 noted the deposition of Benton County to occur on April 19 so that WSDCC could obtain
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18 the necessary discovery. *Id.* ¶ 6. On April 11 and 12, Benton County's counsel placed
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20 multiple calls to WSDCC's counsel, asking WSDCC to move the deposition from April 19
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22 to April 28 or 29. *Id.* ¶ 7, Ex. A (email exchange between WSDCC's counsel and Benton
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24 County documenting WSDCC's efforts to obtain discovery responses). WSDCC agreed to
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26 move the deposition to April 28 and then Benton County informed WSDCC that "no one"
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28 from Benton County could be available for the date that Benton County itself had proposed.
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30 *Id.* Eventually, counsel for Benton County and WSDCC resolved the issue of scheduling
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32 and a deposition will take place on April 25, 2005 – but not soon enough for WSDCC to
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34 obtain any information prior to filing this opposition brief. *Id.*
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37 Similarly, documents needed from King County, and requested by WSDCC in Public
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39 Disclosure Act requests at the outset of this case, were still being produced on April 15,
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41 2005. As of the drafting of this opposition, King County's document production is still
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43 incomplete. Rava Decl. ¶ 15, Ex. L (April 14, 2005 email from WSDCC's counsel to King
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45 County's counsel requesting documents and information not yet produced that are the
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2 subject of outstanding requests).⁸ As WSDCC receives additional information from these
3 and other counties, as well as information gathered in the numerous depositions scheduled
4 for the next three weeks, it will be able to provide more comprehensive discovery responses
5 and a full disclosure of illegal votes and election official error on May 6, 2005.
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9 **D. Petitioners Stipulated to WSDCC's Intervention in this Contest.**

10 Although Petitioners now raise issues regarding the propriety of the manner in which
11 WSDCC intervened, Petitioners willingly stipulated to that intervention. *See Rava Decl.*
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13 ¶ 16, Exs. M-N ("Petitioners stipulate that WSDCC should be permitted to intervene.")
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15 (signed January 12, 2005). Petitioners, who were served with WSDCC's Motion to
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17 Intervene on January 10, 2005 did not raise at that time, or at any time subsequent,
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19 WSDCC's alleged failure to accompany that Motion with a separate duplicative pleading.
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21 On April 13, 2005, the same day that they filed the instant Motion, Petitioners signed
22 a Proposed Order Regarding Pretrial Schedule that explicitly permits the WSDCC to
23 introduce its own evidence of illegal votes and election official error. *Rava Decl.* ¶ 4, Ex. A.
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25 In that Proposed Order, Petitioners agreed that:
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27 Each party shall submit a final list identifying every vote which that
28 party claims was an illegal vote under RCW 29A.68.020(5), every
29 lawful vote which that party claims was not counted due to conduct
30 (election official error, etc.) under RCW 29A.68.020(1) and/or .011,
31 and every unlawful vote which that party claims was counted due to
32 conduct (election official error, etc.) under RCW 29A.68.020(1)
33 and/or .011. . .
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44 ⁸ WSDCC still awaits King County's production of at least the following categories of
45 documents: (1) documents reflecting King County's records of the number of provisional ballots
46 rejected in the 2004 general election; (2) King County's correspondence regarding its voter
47 registration database. *Rava Decl.* ¶ 15, Ex. L.

2 The Democrat intervenors shall submit their final list on all counsel of
3 record by May 6.

4 *Id.* at 2-3. Again, prior to signing this Order, Petitioners never raised any alleged defect in
5 WSDCC's intervention, or any other rationale, to argue that WSDCC could not present
6 evidence of offsetting illegal votes or election official error.
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9 10 III. ARGUMENT AND AUTHORITY

11 12 A. WSDCC Is Permitted to Introduce Evidence of Illegal Votes and 13 Election Official Error in the 2004 Gubernatorial Election. 14

15 The election contest statutes plainly anticipate that all parties, not just the contestant,
16 will offer evidence at trial:
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19 After hearing the *proofs and allegations of the parties*, the court shall
20 pronounce judgment in the premises[.]
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22 RCW 29A.68.050 (emphasis added). The notion that only the contestant may offer proof of
23 illegal votes or election official error is in direct conflict to the election contest statutes that
24 address election official error and call for this Court to determine who received "the highest
25 number of legal votes." *See* RCW 29A.68.050 and .070. Presentation of *all* evidence of *any*
26 error and illegal votes is necessary for the Court to determine who received "the highest
27 number of legal votes." *Id.* Permitting only the contestant to offer proof of illegal votes or
28 election official error would prevent the Court's full and accurate determination of which
29 candidate received the highest number of legal votes and was the true winner of the election.
30 RCW 29A.68.050. Unsurprisingly, the Washington Supreme Court has considered evidence
31 of illegal votes both for and against an election contestant. *See State ex rel. Hyland v. Peter*,
32 21 Wash. 243, 244, 246 (1899) (in "trial in which both parties participated," court identified
33 disputed ballots and counted some for contestant and some for respondent). Petitioners
34 disclaim any obligation to present evidence of anything but errors or illegal votes that
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benefit Dino Rossi, relying on the assertion that "this is an adversarial system." Rava Decl.

¶ 11, Ex. H. But no authority permits Petitioners to turn their trial strategy into a rule of exclusion, particularly in an election contest where the chief principle is "that the judiciary should 'exercise restraint in interfering with the elective process which is reserved to the people in the state constitution.'" *Dumas v. Gagner*, 137 Wn.2d 268, 283 (1999) (internal citations omitted).

Washington's recount statutes also disabuse the notion that Washington law permits a one-sided presentation of information to determine close electoral outcomes. Where the difference in the number of votes cast in a particular election is "less than two thousand votes and also less than one-half of one percent of the total number of votes cast for both candidates," a mandatory recount is conducted "of *all votes cast* on that position."

RCW 29A.64.020(1) (emphasis added). By statute, Washington bars changing the result of an election based only on a partial recount. RCW 29A.64.050 ("When a partial recount of votes cast for an office or issue changes the result of the election, the canvassing board or the secretary of state, if the office or issue is being recounted at his or her direction, shall order a complete recount of all ballots cast for the office or issue for the jurisdiction in question."). The clear legal preference in the case of close elections is to examine all information needed to determine the outcome – not, as Petitioners' posit, to selectively view evidence that tends to benefit a particular candidate.

Despite the sweeping exclusion of all offsetting evidence sought in Petitioners' Proposed Order, Petitioners' Motion does not argue that election contest respondents such as WSDCC are barred from presenting offsetting evidence of illegal votes or election official error. Petitioners actually appear to concede that an election contest requires presentation of evidence by all parties. Motion at 6 ("The trial must be on a level playing field."). WSDCC

wholeheartedly agrees. Petitioners rely only on an alleged pleading deficiency to argue that WSDCC specifically should be prevented from presenting offsetting evidence. Motion at 9-10. For reasons explained below, *see* Part III.C, *infra*, this argument lacks merit and nevertheless does not support a *per se* rule that, in an election contest, only the challenger may present evidence of illegal votes or election official error.⁹

B. WSDCC Does Not Intend to Introduce Evidence Regarding Signature Mismatches.

Petitioners' request that the Court exclude evidence of mismatched signature ballots is a red herring. WSDCC does not intend to present evidence of ballots rejected because of a county's discretionary decision that the signature accompanying the ballot failed to match the voter's signature on file. Rava Decl. ¶ 2. Because Petitioners' Motion proceeds on this false premise, it raises and then rebuts a slew of arguments related only to whether the Court should exclude evidence (regarding signature mismatches) that WSDCC does not intend to introduce. Much of Petitioners' Motion has no bearing outside the limited context of attempting to exclude that specific type of evidence. Motion at 5-8, 10-11 (discussing dismissal of Petitioners' equal protection claim regarding ballots rejected for signature mismatches, prior Supreme Court proceedings in this election clarifying counties' discretionary decisions regarding whether or not signatures matched, and trial management issues presented by revisiting discretionary decisions on signature mismatches).

⁹ Petitioners may attempt to offer new arguments in their reply brief, not asserted in the Motion, as to why respondents in election contests cannot offer evidence of offsetting illegal votes or errors. Substantive arguments raised for the first time in reply must be disregarded, and if Petitioners do so here, the Court should not consider any such arguments. *White v. Kent Medical Center, Inc.*, 61 Wn.App. 163, 169 (1991) ("[W]e hold that it was error for the court to consider the proximate cause issue first raised in [the moving party's] reply memorandum and to rely on that issue as a basis for granting [the motion].").

2 Although WSDCC does not necessarily agree fully with Petitioners' characterizations
3 of their dismissed equal protection claim or the nature of the prior Supreme Court
4 proceedings regarding the 2004 Gubernatorial Election, detailed rebuttal of these arguments
5 is not necessary because they go only to the undisputed point that ballots previously rejected
6 due to mismatched signatures are not at issue in this election contest. Petitioners' argument
7 that this Court will be "overburdened" with signature comparisons, Motion at 11, also
8 requires no rebuttal because it proceeds on the erroneous assertion that WSDCC intends to
9 present such evidence, when WSDCC does not. Rava Decl. ¶ 2. Nonetheless, Petitioners'
10 feigned public policy concern that presentation of evidence in this election contest will be
11 unmanageable did not deter them from initiating this case with expedited discovery requests
12 to all thirty-nine counties in the State, service of sixteen deposition notices in just one day
13 during the week of April 11, 2005, and disclosure on April 15, 2005 of eighty-four pages of
14 charts identifying their final list of alleged illegal votes and numerous categories of alleged
15 election official error. *Id.* ¶¶ 10, 17, Exs. G, O.

28 At trial, WSDCC intends to present evidence that election officials erred in counting
29 or failing to count valid ballots because they simply ignored existing legal duties. Motion at
30 2, n.1. As noted above, Petitioners' Motion does not contend that such evidence should be
31 excluded. One such error is that provisional ballots in at least Adams, Stevens, Walla Walla
32 and Whitman counties were counted without election officials having checked signatures, as
33 WAC 434-253-047 plainly requires. Rava Decl. ¶¶ 8-9. WSDCC is in the midst of major
34 discovery efforts to determine whether other counties committed this error. This evidence is
35 necessary for the Court to determine whether the contestant or the sitting Governor actually
36 received "the highest number of legal votes" in the 2004 election. RCW 29A.68.070.
37 Petitioners raise no substantive arguments to dispute that this or other offsetting error
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evidence may not be offered, and Petitioners provide the Court with no legal support for the summary request in their Proposed Order that the Court should exclude "all evidence regarding other errors alleged by Intervenor to offset errors alleged by Petitioners."

C. There is No Prejudice to Petitioners by Permitting WSDCC to Introduce Evidence of Illegal Votes.

Petitioners have not been prejudiced by the lack of a separate pleading under CR 24(c) to accompany WSDCC's stipulated and unopposed intervention in this case, and their failure to raise that argument prior to their Motion bars their untimely reliance on it now.¹⁰ Moreover, Petitioners' citation to federal law interpreting the pleading requirements of CR 24(c) is at odds with Washington law. Motion at 9 (citing non-Washington authority regarding compliance with CR 24(c)). Washington authority interpreting CR 24(c) states that, where the intervenor does not include a separate pleading with its motion for intervention, it is excused if the omission causes no prejudice. *State ex rel. Graham v. San Juan County*, 102 Wn.2d 311, 317-18 (1984) ("where 'the moving party fails to comply strictly with the requirements of Rule 24(c), the proper approach is to disregard non-prejudicial technical defects'") (quoting *Spring Constr. Co. v. Harris*, 614 F.2d 374, 376-77 (4th Cir. 1980)); *Hockley v. Hargitt*, 82 Wn.2d 337, 346 (1973) ("[D]ismissal of the intervention on this ground would serve no purpose where defendants have not been misled

¹⁰ Petitioners' claim that a "number of County Respondents" filed responsive pleadings is an exaggeration. Motion at 9 n.3. Filing a separate responsive pleading was the exception, not the rule. Out of the 81 original respondents, only Pierce and Walla Walla counties filed answers, and Walla Walla's Answer raised no affirmative defenses whatsoever. Rava Decl. ¶ 19, Ex. Q ("Answer of Walla Walla County & Karen Martin"). As this Court knows, the overwhelming majority of counties and auditors responded to the Election Contest Petition in the exact same manner as WSDCC – by filing substantive motions to dismiss. *Id.* ¶ 18, Ex. P (Letter from WSDCC's counsel to Judge Bridges, dated February 3, 2005, identifying pending motions to dismiss filed by sixteen counties or auditors).

2 or prejudiced."). Similarly, when a party does not oppose intervention, the lack of a separate
3 pleading accompanying the motion for intervention is excused and cannot be raised later.
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5 *State ex rel. Graham*, 102 Wn.2d at 317 (argument on failure to comply with CR 24(c) is
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7 "without merit" where "[the party] did not oppose the intervention.").¹¹
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9 Petitioners never raised the lack of a formal pleading under CR 24(c), and their
10 actions belie their claim of prejudice. Petitioners not only failed to oppose intervention, they
11 stipulated to it. Rava Decl. ¶ 16, Exs. M-N. Petitioners, unsatisfied with WSDCC's
12 discovery responses, contend that they will be prejudiced at trial if WSDCC presents its own
13 evidence of illegal votes or election official error, because they have not seen every specific
14 item of WSDCC's evidence now. Motion at 10. As Petitioners are aware, the parties'
15 discovery responses regarding official error and illegal votes are largely dependent on
16 information obtained from the counties and election officials themselves. Rava Decl. ¶ 14.
17 Moreover, Petitioners' suggestion that WSDCC's intention to introduce offsetting illegal
18 votes or election official error comes as some surprise is contradicted by Petitioners'
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34 ¹¹ Petitioners' own authority, *Dyson v. King County*, 61 Wn.App. 243 (1991), rejects the type
35 of gamesmanship presented by Petitioners' untimely objection to WSDCC's intervention based on
36 CR 24(c). Motion at 9 (citing *Dyson*). In *Dyson*, King County moved to dismiss the plaintiff's case
37 because the plaintiff had failed to file a formal claim with the County prior to filing suit, as was
38 required by city ordinance. *Dyson*, 61 Wn.App. at 244. Rather than raising the alleged procedural
39 defect at the time the suit was filed, however, the County waited until the statute of limitations on the
40 filing of the claim had run and then moved to dismiss. *Id.* at 245. The Court reversed dismissal of
41 plaintiff's case, because the County had taken a "misleading affirmative action" by lying in wait until
42 the alleged technical deficiency could not be corrected. *Id.* at 245-46. Had Petitioners been
43 genuinely prejudiced by the lack of a formal pleading to accompany WSDCC's unopposed
44 intervention, their recourse was to oppose intervention, to request a formal answer, or to move for
45 default. See CR 55(a). Petitioners did none of those things, and their acquiescence in WSDCC's
46 intervention vitiates their appeal to this Court's equity power to bar WSDCC from meaningfully
47 participating at trial.

multiple discovery requests to WSDCC anticipating this exact type of evidence. *Id.* ¶ 13,
Ex. J.

IV. CONCLUSION

Petitioners tell this Court that they initiated this election contest to "restore the integrity of Washington's election process." Petition at 2. But their Motion asks this Court to sanction an election contest without any integrity at all, by permitting Petitioners to pick and choose what they consider election official error or alleged illegal votes, using benefit to Dino Rossi as the sole criteria for admissibility. At the same time, they ask this Court to exclude any evidence that contradicts Petitioners' one-sided view of the 2004 election. The election contest statutes require more – they require a balanced presentation by "the parties" of *all* evidence of election official error and alleged illegal votes so this Court may render a full and accurate judgment. Petitioners' Motion should be denied.

DATED: April 20, 2005.

PERKINS COIE LLP

By /s/Kevin J. Hamilton
Kevin J. Hamilton, WSBA # 15648
William C. Rava, WSBA # 29948
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

Attorneys for Intervenor-Respondent
Washington State Democratic Central
Committee

SPEIDEL LAW FIRM

Russell J. Speidel, WSBA # 12838
7 North Wenatchee Avenue, Suite 600
Wenatchee, WA 98807

JENNY A. DURKAN

Jenny A. Durkan, WSBA # 15751
c/o Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

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THE HONORABLE JOHN E. BRIDGES

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CHELAN COUNTY

Timothy Borders et al.,

 Petitioners,

 v.

King County et al.,

 Respondents,

and

Washington State Democratic Central
Committee,

 Intervenor-Respondent.

NO. 05-2-00027-3

DECLARATION OF WILLIAM C.
RAVA IN SUPPORT OF WSDCC'S
OPPOSITION TO PETITIONERS'
MOTION IN LIMINE TO EXCLUDE
EVIDENCE CONCERNING
PREVIOUSLY REJECTED BALLOTS
AND OTHER "OFFSETTING ERRORS"

I, WILLIAM C. RAVA, state and declare as follows:

1. I am one of the attorneys representing Intervenor-Respondent Washington State Democratic Central Committee ("WSDCC") in this litigation. I am over the age of 18,

DECLARATION OF WILLIAM C. RAVA IN
SUPPORT OF WSDCC'S OPPOSITION TO
PETITIONERS' MOTION IN LIMINE TO EXCLUDE
EVIDENCE CONCERNING PREVIOUSLY
REJECTED BALLOTS AND OTHER "OFFSETTING
ERRORS" - 1
[SL051100.025]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

1 am competent to testify, and make this declaration based on my personal knowledge and the
2 files and records in this matter.
3

4
5 2. The WSDCC does not intend to introduce evidence at trial in this matter that
6 relates to ballots rejected in the 2004 election as a result of comparison by election officials
7 of a signature on an absentee or provisional ballot with a signature from the original voter
8 registration records or a copy of such signature from the voter file for the correct voter and a
9 resulting conclusion that two the signatures did not match. To my knowledge, WSDCC has
10 never claimed that it would present such evidence at trial.
11
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17 3. WSDCC does, however, intend to present evidence of election official errors
18 in the 2004 election to offset claims of error made by Petitioners. For example, WSDCC
19 will submit evidence to show that election officials may have rejected ballots by failing to
20 make a signature comparison at all because of erroneous county records or information; or
21 that election officials mistakenly rejected ballots because they compared ballots to election
22 records erroneously (e.g. checked the wrong voter's record, misread names on ballots).
23 WSDCC will also submit evidence that certain counties unlawfully counted provisional
24 ballots without first verifying the signatures on those ballots by comparing them to the
25 voter's registration records, as required by law. WSDCC has identified other errors in its
26 discovery responses.
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37 4. To the extent not already identified in its discovery responses, WSDCC
38 intends to disclose on May 6, 2005 its final list of illegal votes and election official error in
39 the 2004 general election, as required by the Proposed Order Regarding Pretrial Schedule.
40 A true and correct copy of that Proposed Order, signed by Petitioners, is attached to this
41 declaration as Exhibit A.
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DECLARATION OF WILLIAM C. RAVA IN
SUPPORT OF WSDCC'S OPPOSITION TO
PETITIONERS' MOTION IN LIMINE TO EXCLUDE
EVIDENCE CONCERNING PREVIOUSLY
REJECTED BALLOTS AND OTHER "OFFSETTING
ERRORS" - 2
[SL051100.025]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

1 5. As an example, it appears that King County may have rejected certain ballots
2
3 erroneously, because King County failed to properly investigate the voter's registration
4
5 records. Attached to this declaration as Exhibit B are true and correct copies of documents
6
7 produced by King County and corresponding records from the Secretary of State's voter
8
9 database, reflecting some of those errors.

10 6. Attached to this declaration as Exhibit C is a true and correct copy of an
11
12 email from King County election worker Travis Elsom to King County Elections Director
13
14 Dean Logan (dated December 15, 2004) regarding three voters whose registrations were
15
16 listed as cancelled in King County's records, even though those voters' registrations
17
18 remained valid.

19 7. Attached to this declaration as Exhibit D is a true and correct copy of relevant
20
21 excerpts from an initial draft version of the April 19, 2005 deposition of Dean Logan.
22
23

24 8. Attached to this declaration as Exhibit E is a true and correct copy of the
25
26 Declaration of Joshua C. Jungman in Support of Petition for Writ of Mandamus, filed in
27
28 connection with *McDonald v. Reed*, No. 76321-6 (Wash. S. Ct., filed December 3, 2004).
29
30 Mr. Jungman's declaration identifies certain counties – including Adams, Stevens, Walla
31
32 Walla and Whitman – that counted provisional ballots without first verifying the signatures
33
34 on those ballots against registration records as required by law.
35
36

37 9. Attached to this declaration as Exhibit F is a true and correct copy of an April
38
39 1, 2005 article from the Seattle Post-Intelligencer titled "Four counties admit voting mix-
40
41 ups," identifying Adams, Stevens, Walla Walla, and Whitman counties as those that counted
42
43 provisional ballots without first verifying the signatures on those ballots against registration
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1 records as required by law. Gregory Roberts, *Seattle Post-Intelligencer*, "Four counties
2 admit voting mix-ups," April 1, 2005.
3

4 10. Attached to this declaration as Exhibit G is a true and correct copy of
5 excerpts from the Declaration of David Bowman, counsel for Petitioners, identifying the list
6 of errors and illegal votes they intend to challenge in this election contest. Mr. Bowman's
7 declaration and supporting exhibits totals eighty-six pages.
8

9 11. Attached to this declaration as Exhibit H is a true and correct copy of an
10 April 18, 2005 article from the Seattle Times titled "Democrats search for errors in GOP
11 land," which quotes Dino Rossi's attorney Peter Schalestock. David Postman, *Seattle Times*,
12 "Democrats search for errors in GOP land," April 18, 2005.
13

14 12. Attached to this declaration as Exhibit I is a true and correct copy of relevant
15 excerpts from Respondent Secretary of State's Interrogatories and Requests for Production to
16 the WSDCC and WSDCC's Responses Thereto.
17

18 13. Attached to this declaration as Exhibit J is a true and correct copy of relevant
19 excerpts from Petitioners' Second Interrogatories and Requests for Production to WSDCC
20 and WSDCC's Answers, Responses and Objections Thereto.
21

22 14. Attached to this declaration as Exhibit K are true and correct copies of eight
23 letters sent to Petitioners' counsel, enclosing additional documents or identifying additional
24 information to supplement WSDCC's responses to Petitioners' discovery. WSDCC is
25 continuing to work with counties to identify additional information potentially responsive to
26 Petitioners' discovery requests, which may reflect additional election official error, and is
27 producing that information as it receives it from the counties.
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15. Attached to this declaration as Exhibit L is a true and correct copy of an April 14, 2005 email from Kevin Hamilton, counsel for WSDCC, to Don Porter, counsel for King County, reflecting WSDCC's outstanding requests for certain documents from King County as of April 14.

16. Attached to this declaration as Exhibit M is a true and correct copy of the Stipulated Order, signed by Petitioners, permitting WSDCC's intervention in this action. Attached to this declaration as Exhibit N is a true and correct copy of my email communication with Petitioners' counsel, reflecting their agreement to allow WSDCC to intervene in this action.

17. Attached to this declaration as Exhibit O is a true and correct copy of an April 13, 2005 letter from Petitioners' counsel David Bowman to sixteen counties, enclosing subpoenas to each of these counties.

18. Attached to this declaration as Exhibit P is a true and correct copy of Kevin Hamilton's February 3, 2005 letter to this Court, identifying the motions to dismiss pending in this contest as of that date.

19. Attached to this declaration as Exhibit Q is a true and correct copy of the Answer of Walla Walla County and Karen Martin.

20. Attached to this declaration as Exhibit R is a true and correct copy of my April 18, 2005 letter to counsel for the Secretary of State, Jeff Even and Thomas Ahearne.

SIGNED and DATED at Seattle, Washington this 20th day of April, 2005

s/ William C. Rava
 WILLIAM C. RAVA

DECLARATION OF WILLIAM C. RAVA IN
SUPPORT OF WSDCC'S OPPOSITION TO
PETITIONERS' MOTION IN LIMINE TO EXCLUDE
EVIDENCE CONCERNING PREVIOUSLY
REJECTED BALLOTS AND OTHER "OFFSETTING
ERRORS" - 5
[SL051100.025]

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EXHIBIT A

FOSTER PEPPER & SHEFELMAN PLLC
ATTORNEYS AT LAW



Mr. Ahearne's Direct Dial:
(206) 447-8934

Mr. Ahearne's Direct Fax:
(206) 749-1902

E-Mail Address:
AHEARNE@FOSTER.COM

April 13, 2005

The Honorable John E. Bridges
Chelan County Superior Court
Department No. 3
401 Washington Street
Wenatchee, WA 98807

Re: *Borders v. Chelan County, et al.*;
Chelan County cause no. 05-2-00027-3

Dear Honorable Judge Bridges:

Today you have received at least three letters concerning the "proposed Order" being circulated among counsel with respect to the Pretrial Schedule set by your Honor at the April 5 Status Conference.

That proposed Order is attached. As noted on its signature lines, the parties' counsel have given me either e-mail or telephone authorization to sign for them.

Although we are filing and serving this copy via the "e-filing" service, I am also mailing the ORIGINAL hard copy of this letter and proposed Order via overnight mail. If your Honor requires an attorney to be present in the Courtroom for your signing, Mr. Hamilton kindly volunteered Mr. Spiedel to do that if necessary. Please have your Chambers let me know if you want me to arrange that in order to secure this Order's entry.

Thank you.

Sincerely,

Thomas F. Ahearne
Co-counsel for Respondent
Secretary of State

TFA:do
encl.

cc: All counsel (via e-filing)

1111 THIRD
AVENUE
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98101-3299

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WWW.FOSTER.COM

ANCHORAGE
Alaska

PORTLAND
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SEATTLE
Washington

SPOKANE
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SUPERIOR COURT OF WASHINGTON FOR CHELAN COUNTY

Timothy Borders, Thomas Canterbury, Tom Huff, Margie Ferris, Paul Elvig, Edward Monaghan, and Christopher Vance, Washington residents and electors, and the Rossi For Governor Campaign, a candidate committee,

Petitioners,

v.

Chelan County; Klickitat County; Klickitat County Auditor Diana Housden; Lewis County Auditor Gary Zandell; Snohomish County; Sam Reed, in his official capacity as Secretary of State for the State of Washington; Frank Chopp, Speaker of the Washington State House of Representatives; and Lieutenant Governor Brad Owen, President of the Washington State Senate,

Respondents,

v.

Washington State Democratic Central Committee,
Intervenor Respondents,

v.

Libertarian Party of Washington State,
Intervenor Respondents.

Honorable John E. Bridges

No. 05-2-00027-3

**[PROPOSED]
ORDER REGARDING
PRETRIAL SCHEDULE**

**[PROPOSED]
ORDER REGARDING PRETRIAL SCHEDULE - 1**

50315221.08

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299 ♦ 206-447-4400

ORIGINAL

Pursuant to this Court's rulings at the April 5 Status Conference, this Court hereby ORDERS, ADJUDGES, and DECREES that this election contest shall proceed pursuant to the following pretrial schedule, which shall be amended only upon a showing of good cause by the party requesting such amendment:

1. Motions.

The parties indicated that they wish to file various motions resolve legal issues which may help simplify or focus the discovery and trial of this case. Such motions shall be submitted on the following schedule:

April 8	Each party to identify the motions which that party plans to be filing under this briefing schedule.
April 13	Deadline to file and serve Motions (and supporting papers).
April 20	Deadline to file and serve Responses (and supporting papers).
April 25	Deadline to file and serve Replies (and supporting papers).
May 2, 8:30 a.m.	Hearing on motions (location to be specified by the Court).

2. Cutoff Date To Identify The Votes Being Contested.

Each party shall submit a final list identifying every vote which that party claims was an illegal vote under RCW 29A.68.020(5), every lawful vote which that party claims was not counted due to conduct (election official error, etc.) under RCW 29A.68.020(1) and/or .011, and every unlawful vote which that party claims was counted due to conduct (election official error, etc.) under RCW 29A.68.020(1) and/or .011. That list shall include the following information for each vote which that party claims was illegal, was improperly counted, or was improperly not counted:

- (i) To the extent known, the name, address, voter registration number, and date of birth of the person casting the vote;
- (ii) The County and precinct in which the vote was cast;
- (iii) The reason that party claims the vote was illegal, was improperly counted, or was improperly not counted (e.g., felon voter or unverified provisional ballot);
- (iv) The candidate for whom that party claims the vote was apparently cast; and
- (v) The type of evidence that party intends to use to show for whom the vote was apparently cast (e.g., proportionality analysis, voter testimony, etc.).

The Petitioners shall serve their final list on all counsel of record by April 15.

The Democrat intervenors shall submit their final list on all counsel of record by May 6.

3. Cutoff Dates For Discovery.

Discovery related cutoffs are as follows:

April 15	Deadline for Petitioners to identify their witnesses (fact as well as expert witnesses).
May 6	Deadline for Democrat intervenors to identify their witnesses (fact as well as expert witnesses).
May 13	Deadline for identifying rebuttal witnesses (fact as well as expert witnesses).
May 20	Deadline for completion of discovery.

4. Discovery Master

The Court is not appointing a discovery master at this time. The parties are instructed to promptly bring discovery disputes and problems to the Court's attention. The Court will make itself available for telephone conference call hearings to resolve discovery disputes, and will make itself available by telephone to resolve discovery disputes that arise in the course of depositions.

1 **5. Trial.**

2 The notice provided for by RCW 29A.68.040 will be issued for a two-week trial of this
3 case to commence on May 23.

4
5 **DONE in open Court this _____ day of April, 2005.**

6
7 Honorable John E. Bridges
8 Chelan County Superior Court Judge


9
10 Presented by:

11 **ROB McKENNA**
12 **WASHINGTON ATTORNEY GENERAL**

Foster Pepper & Shefelman PLLC
SPECIAL ASSISTANT ATTORNEYS GENERAL

13 Maureen Hart, Solicitor General

14 Jeff Even [per telephone auth.]
15 Jeffrey T. Even, WSBA No. 20237
16 Attorneys for Respondent Secretary of State
17 Sam Reed


18 Thomas F. Ahearne, WSBA No. 14844
19 Jeffery A. Richard, WSBA No. 28219
20 Hugh D. Spitzer, WSBA No. 5827
21 Marco J. Magnano, WSBA No. 1293
22 Attorneys for Respondent Secretary of State
23 Sam Reed

1 Agreed to as to form and for entry;
2 Notice of Presentation Waived (the following are counsel for the parties who sent an attorney to
the April 5 Status Conference):

3 Davis Wright Tremaine LLP

4 Harry Korrell [per email
auth.]

5 Harry J.F. Korrell, WSBA No. 23173

6 Robert Maguire, WSBA No. 29909

Attorneys for Petitioners

7 Perkins Coie LLP

8 Kevin Hamilton [per telephone
auth.]

9 Kevin J. Hamilton, WSBA No. 15648

10 Attorneys for Intervenor Respondent

Washington State Democratic Central
Committee

11 Snohomish County Prosecutor's Office

12 Michael Held [per email
auth.]

13 Gordon Sivley, WSBA No. 8837

14 Michael C. Held, WSBA No. 19696

Attorneys for Respondent Snohomish County

15 Richard Shepard Law Office, Inc.

16 Richard Shepard [per email
auth.]

17 Richard Shepard, WSBA No. 16194

18 Attorneys for Intervenor Respondent

Washington State Libertarian Party

21 [PROPOSED]

22 ORDER REGARDING PRETRIAL SCHEDULE - 5

26 50515221.08

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299 ♦ 206-447-4400

1 Agreed to as to form and for entry;
2 Notice of Presentation Waived (the following are counsel for the parties who did not send an
3 attorney to the April 5 Status Conference):

4 Chelan County Prosecutor's Office

5 Gary Riesen

[per email
auth.]

6 Gary Riesen, WSBA No. ----

7 Attorneys for Respondent Chelan County

8 Klickitat County Prosecutor's Office

9 Tim O'Neill

[per email
auth.]

10 Timothy S. O'Neill, WSBA No. -----

11 Attorneys for Respondent Klickitat County

12 Lewis County Prosecutor's Office

13 L. Michael Golden

[per email
auth.]

14 L. Michael Golden, WSBA No. ----

15 Attorneys for Respondent Lewis County

16 Auditor

17 Kalikow & Gusa, PLLC

18 Barnett Kalikow

[per telephone
auth.]

19 Barnett N. Kalikow, WSBA No. 16907

20 Attorneys for Respondent Klickitat County

21 Auditor

22 [PROPOSED]

23 ORDER REGARDING PRETRIAL SCHEDULE - 6

24 50515221.08

25 FOSTER PEPPER & SHEFELMAN PLLC
26 1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299 • 206-447-4400

EXHIBIT B

King County voterfile database 1/8/2005

voter_id	990681640
status	A
name_last	GUERRERO
name_first	LYDIE
name_middle	D
house_number	13305
pre_dir	NE
street	171ST
type	ST
post_dir	
city	WOODINVILLE
state	WA
zip	98072
precinct	3193
reg_date	10/2/2004 0:00:00
PAV	N
gender	F
v1104	N(NP)

EX.31

KC 11900

Secretary of State voterfile database 1/8/2005

RegID	990681640
County	17
RegYear	
LastName	GUERRERO
FirstName	LYDIE
MiddleName	D
Gender	F
DOB	
RegDate	10/2/2004
Address	13305 NE 171ST ST K367
State	WOODINVIL
Zip	98072
MailAddress	
MailAdd2	
State2	.
Zip2	
Precinct	0
LevyCode	0
CongDist	0
LegDist	0
Dlv1	
KC_PCT_Long	
v1104	
County_Long	King

294 P

Lydia D. G. rrero

13305^{NE} 171st St K367

Woodinville WA 98072

425-768-5134

Lydia G. rrero

X Not Reg.

not in book

WOOD UNITE COMM CHURCH
45-3193

Barbara J. Rocco

990681640

{ in fail safe

Voter is registered as Lydie Guerrero

Based on handwriting it was easy to mistake 'a' for 'e'

Voter Registered in person 10-14-04

Vote didn't count

I 99ed Lydie → Lydia

King County voterfile database 1/8/2005

voter_id	950311452
status	A
name_last	MARLOW
name_first	LESLIE
name_middle	A
house_number	2434
pre_dir	
street	2ND
type	AVE
post_dir	W
city	SEATTLE
state	WA
zip	98119
precinct	1761
reg_date	4/28/1995 0:00:00
PAV	Y
gender	F
v1104	N(NP)

Secretary of State voterfile database 1/8/2005

RegID	950311452
County	17
RegYear	
LastName	MARLOW
FirstName	LESLIE
MiddleName	A
Gender	F
DOB	
RegDate	4/28/1995
Address	2434 2ND AVE W
State	SEATTLE
Zip	98119
MailAddress	
MailAdd2	
State2	
Zip2	
Precinct	0
LevyCode	0
CongDist	0
LegDist	0
Div1	2/1/2004
KC_PCT_Long	
v1104	
County_Long	King

Registered since 1995 sig matches
in fail safe vote not counted
AS N.F.R.

PROVISIONAL BALLOT

臨時選票

TO BE COMPLETED BY THE VOTER

由選民填寫

11.2.04

Election Date / 選舉日期

950311452

Registration Number / 選民登記號碼

I do solemnly swear or affirm under penalty of law that I am a registered voter in the jurisdiction in which I desire to vote and that I am eligible to vote in this election. I have not voted another ballot, and I understand that any person attempting to vote when he or she is not entitled or who falsely signs this affidavit shall be guilty of a felony, punishable by imprisonment of not more than five years or a fine of not more than ten thousand dollars, or both such fine and imprisonment.

在願受法律制裁下，我鄭重地宣誓或肯定，在此我想投票的選舉區內我是一登記選民而且我有資格在此區選舉中投票。我沒有投其它選票，而我亦明白如有人在他人他處無權參與的選舉中嘗試投票或假意在此宣誓書上簽名，他/她將會被判犯有重罪，受罰入獄不多過五年或罰款不超過一萬元，或同時被判罰款及受監禁。

X Leslie Marlow

Signature of Voter / 選民簽名

Leslie Marlow

Printed Name / 正楷書寫姓名

Date of Birth / 出生日期 Seattle

2434 2nd ave W.

Registered Address / 登記地址

Same as above

Current Address / 現時地址

2434 2nd ave W.

Mailing Address / 郵寄地址

Marlow

Former Last Name / 以前姓氏

(206) 283-9280

Day Telephone Number / 日間電話號碼

Seattle WA 98119

City/Zip / 城市/郵號

Seattle WA 98119

City/Zip / 城市/郵號

Seattle WA 98119

City/Zip / 城市/郵號

Date: 11/2/04

Name: Larric P. Robertson

Address: 5115 NE 4th Pl.

Renton, Wa. 98059

✓ Reg

✓ address fixed

Phone: 425-235-5774

Signature: Larric P. Robertson

Precinct: 37-1643

✓ Reg

Provisional Ballot

Not in poll book

MRP

For G-Allen

Found
Larric P.
Robertson
96036337

EXHIBIT C

Logan, Dean

From: Elsom, Travis
Sent: Wednesday, December 15, 2004 10:06 AM
To: Logan, Dean
Subject: RE: Provisional Canceled

Ok, it didn't take me as long as I thought.
I even had a chance to cross check that list with the voter table for mistakes.
Unfortunately or fortunately depending on how you look at it, I found 3 voters that a user incorrectly keyed in the provisional module.
Two voters were entered in as canceled in the provisional module when in fact they are active. And one voter was entered as canceled who was actually just on inactive status.
I left those people on the list so you could see who they are.
The last two field of the spreadsheet have the voters status code. 'C' for canceled 'I' for inactive and 'A' for Active and the next field is the reason for that status.
The first person on the list is the inactive voter, and at the very bottom of the list are the two Active voters.
Again, all of these voters are keyed in the provisional module as Canceled. And checking against the voter table all but three are truly Canceled voters.
Let me know if you need more information.

Travis Elsom

-----Original Message-----

From: Logan, Dean
Sent: Wednesday, December 15, 2004 9:46 AM
To: Elsom, Travis
Subject: RE: Provisional Canceled

Thank you. That will be a great resource in responding to some of the issues before the canvass board this afternoon.

-----Original Message-----

From: Elsom, Travis
Sent: Wednesday, December 15, 2004 9:12 AM
To: Logan, Dean
Subject: RE: Provisional Canceled

Hummm.... Yes, I think I can work out something like that... It might take me a little time, but I will get cracking on it right away.
I will let you as soon as I get something....

T-

-----Original Message-----

From: Logan, Dean
Sent: Wednesday, December 15, 2004 9:07 AM
To: Elsom, Travis
Subject: RE: Provisional Canceled

25

Travis - Is it possible to include the reason for cancellation on this spreadsheet? Do

we have any reference to that?

Dean Logan, Director
Records, Elections and Licensing Services Division
King County Department of Executive Services

-----Original Message-----

From: Elsom, Travis
Sent: Wednesday, December 15, 2004 8:49 AM
To: Logan, Dean
Subject: FW: Provisional Canceled

This is the list of provisional Canceled Voters.

Travis-

-----Original Message-----

From: Elsom, Travis
Sent: Friday, December 03, 2004 4:10 PM
To: Huennekens, Bill
Cc: Webb, Carlos
Subject: Provisional Canceled

Attached is the list of Canceled voters that voted a provisional ballot.
All 605 of them.

Travis Elsom

EXHIBIT D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

TIMOTHY BORDERS, et al,)	
)	
Petitioners,)	No. 05-2-00027-3
v.)	
)	
KING COUNTY, et al,)	
)	
Respondents,)	
and)	
Washington State Democratic Central)	
Committee,)	
)	
Intervenor Respondent,)	
and)	
Libertarian Party of Washington)	
State, et al,)	
)	
Intervenor Respondents.))	

DEPOSITION UPON ORAL EXAMINATION OF
DEAN LOGAN
(VOLUME II)

Tuesday, April 19, 2005
9:00 a.m.
Davis Wright Tremaine
1501 Fourth Avenue, Suite 2600
Seattle, Washington

DRAFT ** DRAFT ** DRAFT ** DRAFT

Laurie E. Heckel, CSR, RPR
Court Reporter
CSR License No. HE-CK-EL-E386DM

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2

1 Tuesday, April 19, 2005
2 Seattle, Washington

A P P E A R A N C E S

3 For the Petitioners: ROB MAGUIRE
4 Attorney at Law
Davis Wright Tremaine

5 Logan2.txt
 1501 Fourth Avenue
 Suite 2600
 6 Seattle, Washington 98101-1688
 7 For the Respondents: DON PORTER
 JANINE JOLY
 8 Senior Deputy Prosecuting Attorneys
 E550 King County Courthouse
 9 Seattle, Washington 98104-2312
 10 For the Intervenor KEVIN J. HAMILTON
 Respondent Washington Attorney at Law
 11 State Democrats: Perkins Coie
 1201 Third Avenue, Suite 4800
 12 Seattle, Washington 98101-3099
 13 For Secretary of State: JEFFREY T. EVEN
 Assistant Attorney General
 14 1125 Washington Street SE
 P. O. Box 40100
 15 Olympia, Washington 98504-0100
 16 For Snohomish County: MICHAEL HELD
 Deputy Prosecuting Attorney
 17 Snohomish County
 3000 Rockefeller, MS 504
 18 Everett, Washington 98203
 19 Also present: PETER SCHALESTOCK
 Rossi Campaign
 20
 21 BRAD HENRY
 Libertarian Party Representative
 22
 23 DAVID McDONALD
 Washington State Democratic Central
 Committee Representative
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I N D E X	
Witness: DEAN LOGAN:	Page
Examination by Mr. Hamilton	
E X H I B I T S	
No. Description	Marked/ID'd
7 Crediting Voters documentation	*/

11 A How many of the 622 provisional ballots rejected for
12 registration cancellations involved voters who is
13 registration was cancelled during 2004.

14 A I have no way of knowing that right now.

15 Q Who would know the answer to that question?

16 A I don't know of anybody who could answer that by memory I
17 think a report could be produced by looking at the record of
18 622 individuals.

19 Q Who would be the most knowledgeable with respect to those
20 reports?

21 A To which reports.

22 Q The reports that you just described that you could run to
23 determine how many of the 622 provisional ballots rejected
24 for registration cancellations were included in these
25 canceled in 2004.

9

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1 A Well that would be again it would be a comparison of 622
2 individual recordment. There are a number of people who
3 could do that work. It would be part of the responsibilities
4 or or related to the responsibility of the voter services sex
5 so Carlos Webb could certainly do that again I don't think he
6 could do it by memory.

7 (Exhibit 25 marked for identification.)

8 Q Handing you what's been marked as Exhibit No. 25, I'll you a
9 moment to look at it my question is have you seen this
10 before.

11 A Okay.

12 Q You received this e-mail?

13 A I did.

14 Q I'm sorry?

15 A I did.

16 Q Okay. So it shows that on December 15 at least three errors
17 were discovered respect to voter cancellations, correct?

18 A Correct.

19 Q These were voters who were recorded as having their
20 registration canceled when in fact they were active or on
21 inactive status but had registrations, correct?

22 A Correct.

23 Q That was a mistake?

24 A Yes.

25 Q That was a mistake in the registration data base?

¶

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1 A Yes.

2 Q Specifically, it was a mistake in the provisional ballot part
3 of the data base?

4 A Correct. And as a result of that mistake, these 3 ballots
5 were not counted.

6 A That appears to be correct, yes.

7 Q Now this would be another one that would fall into
8 Mr. Maguire category of an instance where a voter did
9 everything right. This isn't the voter's fault?

10 A No, it's not.

11 Q But an error was committed by an election official at King
12 County?

13 A That occurred in processing those ballots. Yes.

14 Q Okay, you've taken out who did it an error occurred by an
15 election official at King County?

16 MR. PORTER: I'm going to object to the form of the
17 question that phrase election official is vague as you
18 further define it.

19 Q I'm sorry. An employee of King County records and elections
20 committed an error?

21 A Correct.

22 Q As a result of that error the ballots didn't get counted?

23 A That's correct, although I'm -- while there may be a
24 reasonable assumption that the fact that they were coded as
25 not being counted for cancellation was an error that in fact

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1 they could have been valid ballots what's missing here is
2 whether or not they were found to be invaluable for another
3 reason so in other words the error that occurred in the data
4 entry which coded them as canceled voters, there is at least
5 a possibility that there would be another reason to have
6 rejected those ballots.

7 Q But you don't know. All we know that is these ballots were
8 rejected, not from a signature mismatch or some other reason
9 these ballots were rejected because they were coded canceled
10 when they shouldn't have been?

11 A That's how they were coded in the system, yes.

12 Q And shouldn't have been?

13 A Should not have been coded as canceled in the system,
14 correct.

15 (Exhibit 26 marked for identification.)

16 Q Handing you what's been marked as exhibit No. 26 which is a
17 specific exchange concerning a registration cancellation I'll
18 give you a moment to look at it, and my question is whether
19 you're familiar with this specific instance.

20 A I'm not familiar with this specific situation nor do I recall
21 reading these specific e-mails.

22 Q You top of page Exhibit 26, top of page 1, appears to be a
23 e-mail from Vicki Moore to a voter admitting that her voter
24 registration had been improperly canceled?

25 A Yes, it does.

12 A He does.

13 Q peter Grasse appears to have properly voted a provisional
14 ballot, correct?

15 A Correct.

16 Q And this goes into Mr. Maguire's category of someone who did
17 everything right at the voter level.

18 A He does, correct. It appears to be -- that to be the case,
19 yes.

20 Q But his vote wasn't counted?

21 A No, he was not given credit for the November 4th election.

22 (Exhibit 28 marked for identification.)

23 Q Handing you what's been Marked as exhibit No. 28, this is
24 another or at least this is another exhibit same format, the
25 third document is a document produced to us from your office

¶

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1 that relates to these 208 needs further research documents.

2 Listen to everything after brake until now?

3 Q And if you look at the first page this one involves Larri
4 L-a-r-r-i, Robertson, the first page of Exhibit 28 of the
5 King County voter file data base printout, second page is the
6 secretary of state voter file data base printout. It appears
7 he voted a provisional ballot because his name didn't appear
8 in the poll book. Why was this provisional ballot coded
9 needs further research?

10 A Well, again, I did not process this nor any other provisional
11 ballot so I can't specifically say why it was.

12 A There are a couple of things that I note on this one. The --
13 there is no date of birth indicated on the envelope. This
14 does appear to be one that was cast without a provisional
15 ballot envelope. The address does not match. The spelling
16 of the first name is at least off with respect to the -- to

17 the E at the end of the first name. So that certainly may
18 have contributed to the failure of the person who reviewed
19 this to identify that Robertson is a common last name. I
20 suspect that there are quite a few Robertsons and even
21 Robertsons with the first name starting with L in our data
22 base. So what it appears based on the information on the
23 last page where it says, Found, Larri P. Robertson is that
24 post the certification of the election that that these were
25 reviewed further, and at that time it was identified that

¶

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1 this matched this person. Again, I don't have access to the
2 sitting here to know if the signature matches.

3 Q Well, whoever posted this posted this post it note on it
4 thought that they found the correct registration number isn't
5 that true?

6 A That's correct that would have been after the certification
7 of the election.

8 Q Okay, so lawyer reP rob [-ERT] son was determined by King
9 County to be a lawful registered voter?

10 A Yes.

11 Q The problem here is that the name in the registration data
12 base was incorrectly spelled, right. Mr. rob --

13 A That may have been the problem that led to the determination
14 for need for further research. I again I didn't process this
15 so I can't say [TPA] for sure. They were identifying a
16 number of issues.

17 Q Okay [W-PL] I'll I'm just [TKWO-EUPBG] to focus on one of the
18 issues first if I can. As between the the voter registration
19 record and Mr. rob [-ERT] son own hand resume you would agree
20 with me that it's a [fare|fair] awe [SH-UPL] [THA-PBS] that
21 Mr. rob is best known how to spell his first name?

22 MR. PORTER: I'm going to object to the form [-FLT]
23 question I think you're making [TAO-FPL] assumptions even
24 that it's a male that it's Larry instead of [HRA-R] re.
25 Q Fine you can answer the question I'm not assuming it's mail

¶

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1 or female?
2 A Can you repeat the question.
3 Q Is it [fare|fair] to assume that this field voter knows best
4 how to [P-EL] his or her first name?
5 A Yeah, I would agree with that.
6 Q So if there is a disagreement between the provisional ballot
7 envelope and the voter registration data base information the
8 most like lie explanation is an input error when the original
9 voter registration was input into the data base, correct?
10 A I would expect that to be the case again not being able to
11 look at that voter registration card that the data entry was
12 done off of I wouldn't know about the legibility that have
13 again if you look only at the third page which was the only
14 document available to the person reviewing this I don't think
15 it's too big of a leap to think that the person searching for
16 this might not have put in search under the name of lawyer
17 re, LA U R I rob [-ERT] son. My own review of it had I
18 looked at this only without the information provided on top
19 of it and looking at the signature [-RBG] I think that go
20 it's possible that you can interpret that to be the common
21 spelling of lawyer re[KHR-S] LA U R I E and if you [S-EFRPD]
22 under that you would it's very likely that you would not have
23 found that signature or a voter matched to this person.
24 Q But you [S-EFRPD] all [PH-EULGD] P rob you would have come up
25 with all the variations wouldn't you?

¶

1 A All robs with the middle initial P.

2 Q Yes?

3 A I suppose that's possible if the middle initial was used at
4 the time that they registered to vote.

5 Q We know it was because it's in the date base?

6 A One that [TPHRO-U] yes we do.

7 Q So if you put in taken the 30 seconds to put in the middle
8 initial you?

9 MR. PORTER: I'm going to object to the form of the
10 question. It assumes facts not in evidence relative to
11 what's involved in searching the day awe [TA-U] base for
12 these records.

13 Q In any event after the election it was determined that this
14 was a match and that Mr. rob was a validly registered voter,
15 correct?

16 A Correct.

17 Q Mr. rob cast a ballot in connection with the November 2004
18 general election, correct?

19 A Correct.

20 Q Mr. rob did everything right in casting his ballot as far as
21 we can determine from the record presented before you,
22 correct?

23 A Correct.

24 Q His vote didn't count because King County was unable to find
25 a registration record, correct?

¶

1 A Correct.

2 Q And King County ultimately concluded that the failure to find
3 the registration record was an error, right?

4 A I don't know that I would agree with that characterization of

5 it I think ultimately King County an employee of King County
6 found a direct match. I don't know that the -- I don't know
7 that it's as simple as saying that it was an error in the
8 processing of that ballot based on the information that was
9 provided.

10 (Exhibit 29 [PHA-RBGTD] for identification.

11 Q Isn't exhibit 29 is another compile [HRA-EUGS] of the records
12 the same way. The last page is the provisional ballot
13 envelope. And before we go further can you describe or point
14 where on exhibit on the last page here this label is affixed
15 or is it on the other side?

16 A It's on the back of the envelope.

17 Q Thank you. Can you read the printed name on the provisional
18 ballot page?

19 A Well having read the whole exhibit I can read I can't
20 actually see the first part of it but it's obviously Jew
21 general [K-EUPBS] according to the information that you
22 provided.

23 Q And do you see the notation at the bottom of the third page
24 of exhibit 29 credibilitied last name of general [K-EPBS] in
25 lieu of [SR-EPB] [K-EUPBS]?

¶

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1 A I do see that.

2 Q In your experience is the last name [SR-EPB] [K-EUPBS] a
3 common last name?

4 A No it's not.

5 Q This appears to be a day [TA-U] entry error in the original
6 [R-EPBLG] [TRA-EUGS] for [RAO-U] general [K-EUPBS] isn't it?

7 A It does.

8 Q And drew general [K-EUPBS] was ultimately determined to be a
9 properly registered voter, correct?

10 A After the certification, yes. Logan2.txt

11 Q Drew general [K-EUPBS] appeared and voted a provisional
12 ballot on November or in the November general election 2004,
13 correct?

14 A He did.

15 Q The drew general [K-EUPBS] who voted has the same date of
16 [TPWH*-EURT] as drew general [K-EUPBS] in the secretary of
17 state voter registration data base right?

18 A I assume that's correct I can't see the entire date.

19 Q I apologize for the copy?

20 A Can I just point out just another piece of information on
21 this would be that at the time that Mr. general [K-EUPBS]
22 registered to vote he would have received a voter
23 identification card back in the mail confirming his
24 registration indicating his pre[S*-EUPGT] and where his
25 polling place is and that would have been in the name of drew

♀

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1 [SR-EUPB] [K-EUPBS] so I only point that out to indicate
2 there was a record provided to him where he would have the
3 opportunity to see that the data entry error was made.

4 Q In this case the data entry error was by King County staff,
5 correct?

6 A I can't confirm that without seeing again the source document
7 it says it was motor voter in-person. My guess is unless his
8 driver's license is also spelled incorrectly it probably was
9 done through data entry in our office, yes.

10 Q And as a result of that data entry error Mr. general kin's
11 vote was not counted?

12 A That's correct.

13 Q Exhibit 30 marked for identification.

14 Q Okay, exhibit 30 is another one same batch these documents

15 were produced to us as out of this needs further research
16 this one is less [HRAO-E] March low. The notes at the top of
17 the third page of exhibit 30 indicate that Ms. March low has
18 been registered since 1995 and the signature matches but her
19 vote was not counted [-FPT] can you explain to me what
20 further research was needed?

21 A Well again I didn't make that determination I was not
22 processing these so I can't specifically say why it was
23 determined to need further research. This one appears that
24 the provisional ballot was issued because the poll book
25 indicated that the voter was issued an absentee ballot it was

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1 issued in the correct precinct so there was a record that the
2 voter had been issued an absentee ballot. The King County
3 voter file, page, on the top indicates that the person was
4 not given credit for voting. So it just based on what you've
5 provided here I would need to do more research to determine
6 whether or not we received an absentee ballot back from this
7 person there is nothing here to indicate that but that's the
8 kind of information I would need.

9 Q You received a ballot back she would have been given credit
10 for voting in the King County voter file data base wouldn't
11 she?

12 A If the ballot had been properly processed.

13 Q You assume that most of your absentee ballots were
14 appropriately processed don't you?

15 A I do system assume that most of them were, yes.

16 Q The vast majority?

17 A The vast majority of all the ballots were processed
18 correctly.

19 Q And in this case she has knotted been given credit for voting

20 in the November 2004 general election?

21 A That's correct but at the time this provisional ballot was
22 being processed we were still processing absentee ballots
23 prior to certification so that would not have been a means of
24 verifying that at that time.

25 Q Well there were lots of provisional ballots that fell in the

¶

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1 category of a prior absentee ballot that had been issued but
2 that ultimately were counted once it was verified the
3 absentee didn't come back, correct?

4 A That's correct, yes, the point.

5 Q So why is this one different?

6 A Again I did not process it I did not review the records I do
7 not so I cannot answer that. I was not the operator who did
8 this.

9 Q It appears to be in error?

10 MR. PORTER: I'm going to object to the lack of personal
11 knowledge I think he's answered all your questions on this
12 one to extent that he can. There is no personal knowledge of
13 this or how the research was conducted.

14 Q If we assume that the handwriting was correct at the top this
15 individual had been registered since 1995 and the signature
16 matches but the vote was not counted this appears to be an
17 error by King County elections and records doesn't it?

18 A I don't know that just based on that you can determine there
19 was an error there was an absentee ballot issued but there is
20 not enough information here for me to determine whether or
21 not there was some reason that the person processing this
22 believed that there was further research needed on the
23 absentee ballot.

24 Q Based on the information here that the individual had been

25 registered since 199 sagittal the signature matched and at

¶ 171

1 least as of January 8th 2005 no absentee ballot was ever
2 credited this was a mistake by King County records and
3 elections?

4 A Either a mistake in the processing of the provisional ballot
5 or in the processing the absentee ballot yes.

6 Q And as a result ofth one of those mistakes the ballot was not
7 counted?

8 A I cannot say that the absentee ballot was not counted without
9 based on the information you provided in the exhibit.

10 Q Well based on your own voter file data base as of January 8th
11 2005 there is no record of her vote being counted?

12 A That's correct.

13 Q okay.

14 Q One more.

15 (Exhibit 31 marked for identification.)

16 Q I've handed you Exhibit 31 is another one in the same
17 category last page of Exhibit 31 appears to be a provisional
18 ballot filled out by Lydia Guerrero. The notes at the bottom
19 provide the voter registration number, and I'll just read it
20 into the record, quote, voters registered and in fail safe as
21 Lydie, and the E in that is underlined, Guerrero. Based on
22 handwriting, it was easy to mistake an A for an E. Voter
23 registered in-person October 14, 2004. Vote didn't count,
24 and then at the bottom it says, I gged Lydie, and then arrow
25 points to Lydia. I assume gg means googled?

¶ 172

1 A I don't assume that. I don't know why --

2 Q You don't know. Okay.

3 A My better my assumption of that would be that would be that

4 that refers that I changed Lydie to Lydia. Because this was
5 done -- this was post certification notations.

6 Q So we look at the King County voter file registration data
7 base as of January 8th, 2005, it shows a Lydie with an E A.
8 Guerrero. The same address?

9 A Yeah, yes.

10 Q Do you know why this was put in needs further research?

11 A No again I didn't process this myself so I don't know the
12 reason that the individual who processed it forwarded it for
13 further information. Obviously there is a difference in the
14 spelling of the first name. That may have had something to
15 do with it.

16 Q All right. On the absentee ballot envelope which is the last
17 page of exhibit 31, it's pretty clearly lid yaw, correct?

18 A Appear to me that way, yes.

19 Q And that's?

20 A That's the provisional ballot envelope not absentee.

21 Q [THA-PBGS] [TPO*] the correction and that's in the voter's
22 handwriting, correct?

23 A Yes.

24 Q So there is an error it was an error in input into the name
25 lid dewith an E instead of lid yaw with an A?

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1 A On the original voter registration.

2 Q Yes?

3 A It appears that to be the case and there is a reference to
4 the fact that the handwriting was easy to mistake the A for
5 the E so again we don't have a source document to look at at.

6 Q Ms. [TKPWA-R] appeared -- appears to be a properly registered
7 voter in King County, correct?

8 A Yes, she does.

9 Q She cast a ballot in the November 2004 general election?

10 A Yes she does.

11 Q Her ballot was not counted?

12 A I believe it was not.

13 Q And her ballot wasn't counted as a result of the inputting
14 error in the original registration input, correct?

15 MR. PORTER: I'm going to object to the form of that
16 question as it calls for speculation. We don't have the
17 source document, the original registration card she could
18 have gone by lid deat the time.

19 Q You could answer?

20 A It appears likely that was the case, yes.

21 Q Okay. I'd like to change subjects here a little bit. And
22 talk about the category of provisional ballots that are
23 alleged to have been fed through the Accuvote machine at the
24 polling places. Are you familiar with that category of
25 issues?

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1 A Yes, I am.

2 Q To date you've been able only able to confirm that there were
3 348 that were actually sent through the Accuvote machine; is
4 that right?

5 A The 348 figure refers to to a sum that reference is from
6 those ballots where we have a documented report of the
7 provisional ballots going through the Accuvote either from
8 some notation given to us by the poll worker or through
9 communication with the poll worker during the canvassing
10 process.

11 Q Okay and so anything to the extent that there is any numbers
12 that have been discussed above the 348 in those instances
13 there is no documented report or actual direct evidence of

EXHIBIT E

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SUPREME COURT OF WASHINGTON

DAVID T. MCDONALD, ET AL.,

Petitioners,

v.

SECRETARY OF STATE SAM REED, ET
AL,

Respondents.

NO.

DECLARATION OF JOSHUA C.
JUNGMAN IN SUPPORT OF
PETITION FOR WRIT OF
MANDAMUS

I, Joshua C. Jungman, declare under penalty of perjury of the laws of the State of
Washington that the following is true and correct:

1. I am competent to make this declaration and do so upon personal knowledge
as indicated.

2. The facts stated herein are accurate to my personal knowledge or are based
upon information compiled under my supervision. I believe them to be accurate.

DECLARATION OF JOSHUA C. JUNGMAN
IN SUPPORT OF PETITION FOR WRIT OF
MANDAMUS - 1

[15934-0006-000000/DOCUMENT.02]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

	Did they attempt to compare the signatures on the back of the provisional envelope to the signature they had on file? If so, what methods and standards were used?
Adams	Don't check signatures on ballots voted at polls/provisional ballots.
Asotin	Yes. They use "the 3 point rule." This year all signatures matched. Elaine "They always matched we don't have any crooks here, we have all honest people."
Benton	Yes. They receive training from election conferences on what to look for. They look at curvature, slant, to see if the letters generally match. They follow "all statutory and administrative procedures." If one staff member doesn't think a signature matches, then two staff members look at it, then if it still doesn't match it goes to the canvassing board. There were no staff level rejection of signature mismatches for provisional ballots this year. This is the most PB they have ever had, usually have between 200-300 in a general election. They also send out update letters to a voter if signature doesn't match.
Chelan	They do not match signatures on provisional ballots, they are treated as poll ballots, and poll voter signatures are not checked.
Clallam	Yes. It's an all mail county. To even get a PB the voter has to go to the Auditor's office. Before a voter is given a PB they look them up on the computer and check name/signature. They check signatures again when counting, they look for a number of comparing points, but there is no specific number. If the staff thinks the signature doesn't match, it goes to the canvassing board. The board eyeballs it, they are "very liberal" with what matches, and it's not very often that a signature doesn't match. All signatures matched this year, and they usually do.
Clark	Yes. Try to find three similarities, but if there are less, then they look closer to see if any consistency. Look for similarities including: beginning letter of names, where the stroke ends, slant, relation of signature to line, size of signature, individual letters within name, place where letter descends below line, unique characteristics (swoops curls), look to see if may have changed over time. If a worker finds a mismatch it goes to the supervisor. If supervisor also thinks it is a mismatch, they will print out any image of the voters signature on file (voter reg. card, absentee ballot request, etc.) and send it to the canvassing board.

	Did they attempt to compare the signatures on the back of the provisional envelope to the signature they had on file? If so, what methods and standards were used?
Grant	Yes. Signatures are matched with the computer scanned in version. If staff does not find that they match, it is taken before the canvassing board. 2 out of 3 must agree that it matches. Basically, it is just a side by side comparison of the two signatures--nothing more formal than that.
Grays Harbor	Yes. They check signatures against the computer. They do things like turn the signature upside down, look at curvature and slant. The signatures usually match. Process: if a staff member rejects for mismatch, then it goes to administration, if administration also rejects it, then it goes to the canvassing board. They had some signatures that went to the canvassing board this year, but they were determined to match.
Island	Yes. They look to see if letters, size/proportion, or slant is similar. They don't have a specific formula-- they look to see if the signature is different. There were no signatures that weren't cleared up this year. If there are any problems they contacted the voter and the voter either showed ID with their signature or told them why their signature may not have matched-- such as they broke their arm. Sometimes they have spouses that sign for each other, or use power of attorney for a spouse in the army, but same name mismatches not an issue.
Jefferson	Yes. They prefer six point of matching, and look at curvature, slant, capital letters, however they mainly "look at the signature." It is rare that a signature doesn't match. If a staff thinks there's a mismatch, then multiple staff look at the signature, if they still think it doesn't match, then it goes to the canvassing board. At the canvassing board they look at all things possible to find a match-- capital letter, how it's dotted, it's crossed, look at it upside down. (spoke with Donna)
King	Yes. They look for three points in common, which can include any similarity in curvature, slope, etc. If a worker thinks a signature doesn't match another more experienced worker looks at it. If both think that the signature doesn't match the ballot is rejected-- it doesn't go to the canvassing board.

	Did they attempt to compare the signatures on the back of the provisional envelope to the signature they had on file? If so, what methods and standards were used?
Mason	Yes. There are no specific requirements, as a "rule of thumb" they follow guidelines (they can provide no written guidelines) taught to them by a state patrolman they look at curvatures, slant, they try and match signatures. If a worker can match the signature it goes to the canvassing board. Usually provisional ballots match.
Okanogan	Yes, but they had no mismatches. Their standard was to look for 3 points of similarity -- Anything under 5 points of similarity was sent to CB
Pacific	Yes. They use 3 point matching. They have never had a mismatched signature on a provisional ballot, but if they did it would go to the canvassing board. Overall they usually don't have that many signatures that don't match-- it's usually signed with an X (no witnesses), power of attorney, or spouse signed.
Pend Oreille	Yes. They do not have a point system. They mainly look to make sure that the first letter matches. Then look if there are other similarities, such as curvature and slope. If a worker (Britney) doesn't think that the signature matches, she may have another worker look at it. If both people agree it's a mismatch a letter is sent to the voter. If the signature is not cleared up then it goes to the canvassing board.
Pierce	Yes, had a total of 34 ballots not counted. They were trained/attended presentations at state conferences. They do not go by a point system, they look at slopes, curvature, a combination of things to see if there is enough similarities between the signatures. If a worker thinks there is a discrepancy, then it goes to a supervisor, and if it is still not resolved it goes to the canvassing board. They also send letters to the voter if there are signature issues.
San Juan	Yes. They don't have a point system-- they look for similarities between the signatures, letters, slant. Usually the signatures match, if there is a staff question then it would go to the canvassing board.

	Did they attempt to compare the signatures on the back of the provisional envelope to the signature they had on file? If so, what methods and standards were used?	
Wahkiakum	No	
Walla Walla	No	
Whatcom.	Yes; They were given training by the Secret Service. This was passed on to temp staff. If there was any problem, it was sent. Things to look for: Don't look at beginning, but rather at the end. Slant. (2 most important things are end and the slant). Told at one point to look at the signature upside down (didn't do that this year).	
Whitman	No -- they looked for a registration, but did not compare any signatures on provisionals. (They did not have any missing signatures, to Eunice's recollection)	
Yakima	Yes, but only 1 signature did not compare (sent letter, no response, ballot not counted) -- Use the procedure used for absentees. Look for style, slant, age of the file signature (if it just looks like deterioration, these are sent a letter requesting an update, but the ballot is counted and the ballot not even sent to the CB), "required to have" 3 points of similarity. If a staff member thinks it's questionable, they first send it to the Elections Manager and Office Manager. At least 4 people look at the signatures before they even get to the CB.	

County	Provisional Rejection Rate for Nonmatching Signature	Number of Provisional Ballots Cast	Number of Provisionals Rejected	Number of Provisionals Rejected for Nonmatching Signature	Absentee Rejection Rate for Nonmatching Signature	Number of Absentee Ballots Cast	Number of Absentees Rejected	Number of Absentees Rejected for Nonmatching Signature
Lewis	0.55%	183	51	1	0.10%	32,735	173	32
Lincoln	0.00%	92	18	0	0.00%	4,610	18	0
Mason	0.00%	511	124	0	0.02%	17,613	78	3
Okanogan	0.00%	81	25	0	0.10%	18,704	90	16
Pacific	0.00%	139	36	0	0.01%	8,023	30	1
Pend Oreille	5.56%	18	11	1	0.18%	8,300	27	10
Pierce	0.01%	9,203	1,993	1	0.07%	248,739	2,008	180
San Juan	0.00%	61	49	0	0.07%	6,888	28	5
Skagit	0.07%	1,528	307	1	0.02%	30,744	221	5
Skamania	0.00%	28	2	0	0.23%	5,219	28	12
Snohomish	0.60%	8,709	1,469	52	0.03%	194,871	1,128	52
Spokane	0.00%	5,302	1,284	0	0.01%	133,081	706	8
Sleevs	0.00%	558	164	0	0.01%	10,482	32	1
Thurston	0.62%	4,973	808	31	0.03%	84,795	534	0
Wahkiakum	0.00%	10	4	0	0.04%	2,255	4	1
Walla Walla	0.00%	473	131	0	0.12%	15,502	117	19
Whatcom	0.00%	3,751	513	0	0.06%	87,261	113	35
Whitman	0.00%	1,002	219	0	0.75%	8,283	128	47
Yakima	0.03%	3,197	488	1	0.13%	54,410	104	72
TOTAL	11.9364%	95,383	11,445	844	0.3289%	1,847,433	11,611	2,392

Affidavit of Joshua C. Jungman

2

EXHIBIT 2

EXHIBIT F

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Friday, April 1, 2005

Four counties admit voting mix-ups

Signatures on scores of provisional ballots weren't matched up

By GREGORY ROBERTS
SEATTLE POST-INTELLIGENCER REPORTER

Hundreds of votes were improperly counted in the November election when poll workers in four Eastern Washington counties tallied provisional ballots without first matching signatures on the ballot envelopes with those on file, officials have acknowledged.

The provisional ballots in those counties were checked to make sure names and addresses matched with registered voters, but the signatures were not verified as required by state regulation.

It's unclear what effect this could have on the legal challenge to Democrat Gov. Christine Gregoire's election, still pending in a Chelan County court, although both sides in the dispute say it helps their case.

Democrats say if unverified provisional ballots in King County are to be tossed out, so should those in Eastern Washington. That would be important if the court rules, as the GOP has argued, that improper votes should be subtracted from the tallies of Gregoire and her Republican opponent, Dino Rossi, in proportion to their percentages of overall vote totals. The four Eastern Washington counties all favored Rossi.

Republicans, who would like the proportional analysis applied in Gregoire's stronghold of King County, say the problems with provisional ballots in Eastern Washington can't be compared to those in King County. In any event, they say, the missteps underscore Rossi's contention that the entire election was a mess and a new one should be held.

Gregoire beat Rossi by 129 votes in a hand recount of more than 2.8 million ballots.

Republicans have pointed to illegal voting by felons and other irregularities in the election. Much of the Republican fire has been directed at King County, where Gregoire rolled up a 150,000-vote plurality.

Provisional ballots are issued by poll workers when a voter shows up on

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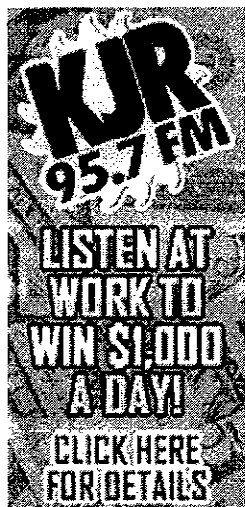
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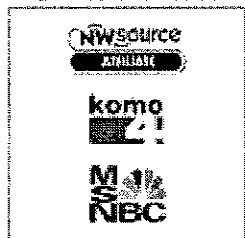
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Election Day but his or her name cannot be found on the list of registered voters for that polling place. The voter signs for the ballot, fills it out and places it in an unmarked security envelope, which then goes inside a provisional ballot envelope. The outer envelope includes space for the voter to enter his or her name, address, date of birth and signature.

After the polls close, elections workers compare the information on the outer envelope to their roster of registered voters. If they get a match, the ballot is counted.

The ballot itself is not specially marked or coded as a provisional ballot, and once counted, it is generally not possible to distinguish it from mail-in absentee ballots and others tabulated after the polls close. Provisional ballot outer envelopes from the November election are to be kept on file until September 2006.

According to an official regulation issued by Washington Secretary of State Sam Reed in August, "A provisional ballot cannot be counted unless the voter's name, signature and the date of birth, if available, matches a voter registration record."

But in at least four counties, workers did not compare the signatures on provisional ballots to their records, county auditors said.

"We did not check their signatures against our signatures in-house," said Auditor Nancy McBroom in Adams County.

"With the new law, it says, I guess, you're supposed to confirm the signatures," McBroom said. "We have always considered, prior to that, that when the person comes in and (they) present themselves to election workers, they're identifying themselves."

Adams County tallied 108 provisional ballots after matching names and other information with registration lists and rejected 36, McBroom said. Rossi defeated Gregoire there, 68 percent to 30 percent.

Other counties that failed to compare signatures as part of their review of provisional ballots included:

- Stevens. Its tally included 560 of 744 provisional ballots. The county gave Rossi 62 percent of its votes.
- Walla Walla. Election workers validated 342 of 473 provisional ballots. Rossi carried the county, 63 percent to 35 percent.

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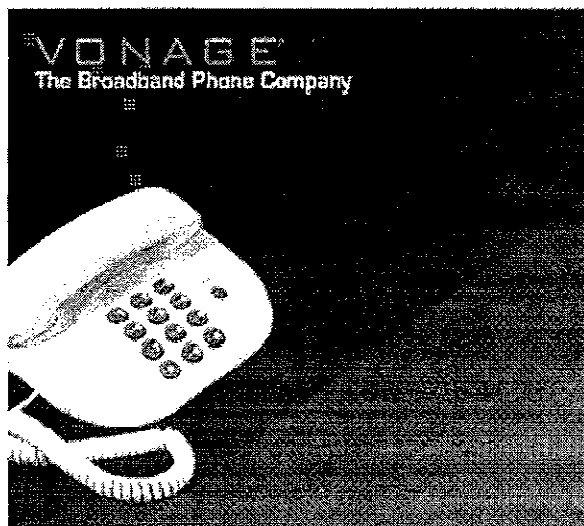
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- Whitman. It counted 783 of 1,002 provisional ballots. Rossi got 53 percent there.

In King County, which issued more than 31,000 provisional ballots on Election Day, workers checked the envelope signatures for three points of similarity with signatures on file to determine a match, an elections department spokeswoman said.

But King County had its own problems with provisional ballots. Nearly 660 mistakenly were fed directly into vote-counting machines at polling places with no check of their validity and no way to retrieve them.

Poll workers attested to knowledge of 348 of those ballots specifically, and elections workers verified that 252 of those were cast by legal voters. About 40 of those 348 ballots were cast by persons ineligible to vote, and the status of about 50 could not be determined. Officials said they're still researching the rest of the approximately 660 ballots.

Rossi hopes to use the voting foul-ups as leverage in his legal challenge. Beyond the question of provisional voters, the GOP has given King County officials a list of hundreds of alleged felons who illegally voted.

Although Chelan Superior Court Judge John Bridges has declared that the Republicans need to show Gregoire owes her victory to illegal votes, and not merely that the number of illegal votes exceeds her margin, he hasn't determined how the Rossi forces may meet that requirement.

In pretrial filings, the GOP argued for a pro-rated subtraction of illegal votes from each candidate, based on the overall percentage of votes received. So, for example, if 1,000 illegal votes were cast in King County, where Gregoire won 58 percent to Rossi's 40 percent, the court could subtract 580 votes from Gregoire's total and 400 from Rossi's.

The Democrats don't buy that argument. But should Bridges decide against the Democrats, they may marshal data of their own to influence any proportional reduction.

That's where the mishandled provisional ballots from Rossi counties could come into play. "If they were counted without proper verification, then as we understand the situation in an election contest (in court), they are going to be illegal votes," Democratic lawyer David McDonald said.

But state Republican Party Chairman Chris Vance said the error in the four counties was not the same as the foul-up in King County. The auditors in the four counties did attempt to match provisional ballots and registered voters via names, addresses and other identifiers, Vance said -- and if need be, they could go back and check the signatures.

P-I reporter Gregory Roberts can be reached at 206-448-8022 or gregoryroberts@seattlepi.com

EXHIBIT G

The Honorable John E. Bridges

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CHELAN

Timothy Borders, et al.,

Petitioners,

v.

King County and Dean Logan, its Director of
Records, Elections and Licensing Services, et al.,

Respondents,

v.

Washington State Democratic Central
Committee,

Intervenor-Respondent,

v.

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-00027-3

**DECLARATION OF
DAVID BOWMAN**

DAVID BOWMAN declares as follows:

I am an attorney at Davis Wright Tremaine LLP, attorneys of record for Timothy Borders, et al. ("Petitioners"). I make the statements in this Declaration based on personal knowledge, and if called and sworn as a witness in any proceeding, could and would testify competently thereto.

DECLARATION OF DAVID BOWMAN - 1

SEA 1635105v1 55441-4

Davis Wright Tremaine LLP
LAW OFFICES
2600 Century Square - 1501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 622-3150 • Fax: (206) 628-7699

IMPROPERLY CAST AND COUNTED PROVISIONAL BALLOTS

Petitioners identify the following individuals, based upon information from King County, in connection with provisional ballots that were improperly cast and counted due to errors, neglect, and/or misconduct of elections officials under RCW 29A.68.020(1) and/or 29A.68.011. Because they were improperly cast, they are also illegal votes. Petitioners intend to use a proportional analysis to show for whom such votes were cast. See the experts' reports submitted as Exhibits A and B to Petitioners' Witness List, filed herewith. Based on the experts' analyses, if invalid votes identified by Petitioners had not been counted, Dino Rossi would have won the election by approximately 100 votes. (This number will increase when the most recently discovered invalid votes are factored in to their analyses.) This list represents Petitioners' best efforts, based on information currently available from King County, to identify the 348 voters whose provisional ballots King County acknowledges were improperly tabulated at polling places without first being verified. The expert analyses of invalid votes provided by Petitioners include 92 provisional ballots from this group of 348, based on King County's statement that those 92 were cast by voters who were not registered or were credited with voting another ballot.

Voter's Last name	Voter's First name	Voter's Middle name	Residence address	County	Voter ID	Precinct	DOB (redacted)
1 PATRON	HELEN	A	33006 18TH S 2301, FEDERAL WAY, WA 98003	King	990678782	2990	
2 QUEVEDO	GUILERMO	J	3338 320TH ST 77 FEDERAL WAY, WA 98003	King	990628081	3001	
3 FABER	JARED	PAUL	33318 18TH LN S F101, FEDERAL WAY, WA 98003	King	940694308	2990	
4 CHAPMAN	ROCKELLE	LUTRICE	2216 S 336TH ST #305, FEDERAL WAY, WA 98003	King	960403193	3301	
5 SLAKER	CHASE	R	8930 192ND PL, BOTHELL, WA 98011	King	990686130	2865	
6 ONEILL	MICHELE	R	17727 BEACH DR NE, LAKE FOREST PK, WA 98155	King	930172111	470	
7 HILL	MICHELE		10101 8TH AVE S #482, SEATTLE, WA 98168	King	970437541	3014	
8 PICKFORD	JOHANNA	K	10449 1ST AVE S, SEATTLE, WA 98168	King	930083496	1135	
9 STRONG	KASIA	T	11857 22ND AVE SW, BURLEN, WA 98146	King	30247485	1104	
10 GELTZ	JOHN		N/A				
11 LUYANDO	KIRISIMASI	S	10300 DES MOINES MEMORIAL DR S #210, SEATTLE, WA 98168				
12 LLOYD	DENNIS	A	721 S DIRECTOR, SEATTLE, WA 98108	King	950204427	1266	
13 WONG	DEE	CHCUP	11017 16TH AVE SW #1, SEATTLE, WA 98146	King	100978	426	
14 KROGSTADT	JANICE	L	11016 177TH AVE SW, SEATTLE, WA 98146	King	801064191	426	
15 CHAPMAN	MARY	T	10840 4TH AVE SW, SEATTLE, WA 98146	King	930191612	1135	
16 CURRIE	JULIE	MARIE	235 SW 115TH ST, SEATTLE, WA 98146	King	920572562	231	
17 CURRIE	DAMON	A	235 SW 115TH ST, SEATTLE, WA 98146	King			
18 DO	VU	H	11407 16TH AVE SW #2, SEATTLE, WA 98146	King	40077651	1231	
19 CARMIGNANI	KEVIN	A	10806 1ST AVE S, SEATTLE, WA 98168	King	921634170	234	
20 SMITH	JESSICA	C	3007 SW 316TH ST, FEDERAL WAY, WA 98023	King	990601452	3046	
21 BARTLES	ASHLEIGH	R	2425 SW PL SW, FEDERAL WAY, WA 98023	King	990602947	3020	
22 COMBS	JAMES	M	32325 40TH PL SW, FEDERAL WAY, WA 98023	King	921276117	1694	
23 NEAL	BARBARA	J	1010 9TH ST SE, FEDERAL WAY, WA 98002	King	970213511	81	
24 MOORE	VICKI		9330 SW 320TH ST, FEDERAL WAY, WA 98023	King			
25 CHAMBERS	SONOKO		23305 SE BLACK NUGGET RD, ISSAQUAH, WA 98029	King	990696576	2602	
26 ROBBINS	ELAINE	L	5106 E LK SAMAMISH PKWY SE, ISSAQUAH, WA 98029	King			
27 BENO	KATHY	J	1875 30TH AVE NE, ISSAQUAH, WA 98029	King	800459630	3464	

EXHIBIT H



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Today's front page

Monday, April 18, 2005 - Page updated at 12:00 a.m.

Democrats search for errors in GOP land

By David Postman

Seattle Times chief political reporter

Democratic Party attorneys are trekking through rural Washington this week in search of election errors and illegal votes that helped Republican Dino

Rossi as much or more than foul-ups and felon voters in the Puget Sound region may have helped Gov. Christine Gregoire.

As both sides begin taking depositions in earnest this week, Republicans want to stop Democrats from being able to use in court what they find on their tour of Rossi country.

Democratic attorneys are set to be in Colville today to take a deposition from Stevens County election officials. Tomorrow they will move on to Whitman and then Walla Walla, Whatcom and Adams counties Wednesday. Rossi won all of those but Whatcom County.

King County has been the main focus of the legal fight over the November governor's election because it is the state's largest county, has been plagued with vote-counting errors and overwhelmingly backed Gregoire in the governor's race.

Republican attorneys have issued subpoenas to four King County officials — election director Dean Logan, his assistant, Bill Huennekens, and two others involved in administering absentee ballots. They also plan to depose Pierce County officials.

Logan's deposition begins today and will run at least two days as Republican and Democratic attorneys get the chance to question him under oath. Huennekens will be deposed Thursday and Friday.

Democrats issued subpoenas to officials in nine other counties and in the Secretary of State's Office, as well as the Building Industry Association of Washington, the home-builders group that helped Rossi in the search for illegal votes.

"It is apparent that the Republicans have cherry-picked all over the state in an effort to present a distorted picture to the court," said Democratic Party attorney Kevin Hamilton. "If they want to talk about any category of error, we need to talk about them all over the state."

Republican attorney Peter Schalestock said Republicans did not ignore any

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evidence of illegal votes that they knew could hurt Rossi and have included in their allegations suspect votes in counties where Rossi did well.

But they weren't looking to make the Democrats' case for them.

"In any court case, you present the evidence that favors you," he said.


"There's no obligation in court to present all the evidence that helps or hurts you. This is an adversarial system."

Republicans filed papers last week asking Chelan County Superior Court Judge John Bridges to rule that evidence collected by Democrats now "is excluded from and inadmissible in these proceedings."

"It is now too late for the [Democrats] to pursue alternative theories or evidence," Republicans wrote in their motion.

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In January, Republicans filed a legal challenge to the election under the state's election-contest statute. A trial is set to begin in Chelan County on May 23, when attorneys for Rossi and Republican Party Chairman Chris Vance will try to prove there were enough errors and illegal votes that the election should be nullified and Gregoire removed from office.

Gregoire was declared the winner of the race by 129 votes after a manual recount overturned the results of two earlier counts.

The Republican lawsuit was filed against Secretary of State Sam Reed and local election officials. Counties and their election officials have been dismissed from the case. The Democratic and Libertarian parties intervened as respondents.

On May 2, Bridges will hear arguments on key pre-trial motions, including whether Democrats can present the evidence they are collecting this week.

At trial, Republicans will have to prove that Gregoire won the election only because of errors by election officials and illegal votes. The law says that in a contested election, illegal votes should be subtracted from the totals for both candidates involved, in an effort to determine who was the legitimate winner.

Both sides will have attorneys at each of the 18 scheduled depositions, and each will have a chance to ask the officials questions under oath.

Democrats would not say much about what they are looking for outside of King County. Hamilton said that 1,800 absentee ballots were counted outside of King County without election officials having checked signatures. Democrats also have said they suspect Republicans listed alleged felon

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voters primarily in places where such votes would be most likely to have helped Gregoire.

"That is a phenomenon that doesn't just occur in Seattle," Hamilton said.

Democrats are looking for offsetting errors in King County, too, to counter the well-publicized mistakes and lost-and-found ballots that Republicans have focused on.

Democrats want to know more about some 200 uncounted absentee ballots that King County set aside with the notation "needs more research." Hamilton said the county has not provided details on what research was done.

They are also looking in other counties for evidence that absentee or provisional ballots were wrongly rejected, and if they find it this week they intend "to argue that such votes should be counted," according to an April 7 letter Democratic attorney William Rava sent to his Republican counterparts.

Hamilton said Rossi wants to exclude anything that could balance the picture of election errors.

"I think that makes his agenda pretty clear," Hamilton said. "He's not trying to ascertain what the will of the voter was. He's trying to do whatever it takes to get power through this court proceeding."


Republicans say in last week's motion that some of the ballot-counting issues now raised by Democrats were settled either by the state Supreme Court in earlier cases or by Bridges' rulings on previous pre-trial motions. They say Democrats needed to have filed specific claims with the court, as Republicans did, in order for them to now introduce evidence of wrongdoing.

Schalestock said Democrats have also not responded fully to Republican requests for information so "they waive the right to raise the issue."

"Up until fairly recently they have referred to this as a model election," Schalestock said. "At this point, all that's on the table is what we put there."

David Postman: 360-943-9882 or dpostman@seattletimes.com

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EXHIBIT I

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SUPERIOR COURT OF WASHINGTON FOR CHELAN COUNTY

Timothy Borders, Thomas Canterbury, Tom Huff, Margie Ferris, Paul Elvig, Edward Monaghan, and Christopher Vance, Washington residents and electors, and the Rossi For Governor Campaign, a candidate committee,

Petitioners,

v.

Chelan County; Klickitat County; Klickitat County Auditor Diana Housden; Lewis County Auditor Gary Zandell; Snohomish County; Sam Reed, in his official capacity as Secretary of State for the State of Washington; Frank Chopp, Speaker of the Washington State House of Representatives; and Lieutenant Governor Brad Owen, President of the Washington State Senate,

Respondents,

v.

Washington State Democratic Central Committee,
Intervenor Respondents

v.

Libertarian Party of Washington State,
Intervenor Respondents.

Honorable John E. Bridges

NO. 05-2-00027-3

RESPONDENT
SECRETARY OF STATE'S
INTERROGATORIES AND
REQUESTS FOR
PRODUCTION OF
DOCUMENTS TO THE
WASHINGTON STATE
DEMOCRATIC CENTRAL
COMMITTEE [*"Secretary of
State's Discovery Requests
To the Democrats"*]

AND THE WASHINGTON
STATE DEMOCRATIC
CENTRAL
COMMITTEE'S
RESPONSES THERETO

TO: Respondent Secretary of State ("Secretary");

AND TO: Jeffrey Even and Thomas Ahearne, Attorneys for Respondent Secretary of State.

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERETO - 1

[15934-0006-000000/SL050700.056]

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1 efforts to rehabilitate the allegedly mismatched signature on an absentee or provisional
2 ballot envelope.
3

4 WSDCC has no information relating to whether these uncounted lawful votes in the
5 2004 General Election included votes in the gubernatorial election and, if so, for which
6 candidate (including write-in candidates) the voter voted. WSDCC's investigation is
7 ongoing and it will supplement its answer to the extent the investigation uncovers additional
8 responsive information.
9
10
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12
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15

	(a)	(a)	(a)	(a)	(a)	(a)	(b)	(c)	(d)
	Voter's full name	residence address	phone	voter ID/ registration number	Date of birth	county & precinct	error, etc. you claim caused lawful vote to not be counted	Candidate for whom you claim vote was apparently cast	type of evidence you rely upon to show candidate for whom vote was apparently cast
16									
17									
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26	1	Voter #1							
27	2	Voter #2							
28	3	Voter #3							
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33 **INTERROGATORY NO. 21:** Please:

- 34
35 (a) identify each unlawful vote you claim was cast in the 2004 election but
36 nonetheless was counted as a result errors, omissions, misconduct,
37 neglect, wrongful acts, irregularities, or improper conduct of elections
38 officials - including, to the extent available to you, the full name of the
39 voter in whose name you claim that vote unlawful vote was cast, that
40 voter's residence address, telephone number, voter ID or registration
41 number, county voting precinct, and date of birth;
42
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RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERE TO - 20

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- 1 (b) for each vote you identify, briefly state the error, omission, misconduct,
2 neglect, wrongful act, irregularity, or improper conduct you claim caused
3 that unlawful vote to be counted (e.g., provisional ballot that was not
4 validated, undervote that was improperly enhanced, ballot that was
5 improperly duplicated, improper correction of error brought to election
6 official's attention, etc.);
7
8
9 (c) for each vote you identify, state the candidate for whom you claim that
10 vote was apparently cast in the 2004 Governor's election; and
11
12 (d) for each vote you identify, state every type of direct or circumstantial
13 evidence you rely upon for your claim concerning the gubernatorial
14 candidate for whom that vote was apparently cast (e.g., proportional
15 analysis, statement by the voter, etc.).
16

17 To facilitate the prompt and orderly evaluation of the unlawful votes you claim were
18 counted in the 2004 Governor's election, please provide your answers in the matrix format
19 illustrated below.
20
21

22 **ANSWER:**
23

24 WSDCC's answer to this Interrogatory does not currently lend itself to presentation
25 in the matrix format suggested by the Secretary of State. Although its investigation is not
26 yet complete, in addition to those votes listed in Exhibit A, WSDCC is currently aware of
27 the following categories of unlawful votes in the 2004 General Election that may have been
28 counted:
29
30
31
32
33
34

35 (1) Felons who did not have their rights restored may have voted in a number of
36 counties, including, *inter alia*, King, Pierce, Kitsap, Adams and Chelan.
37
38

39 (2) Adams, Benton, Chelan, Cowlitz, Island, Jefferson, King, Pierce, Spokane,
40 Stevens, Walla Walla, Whatcom and Whitman counties may have counted provisional
41 ballots before voter signatures on the provisional ballot envelopes were verified as required
42 by Washington law. See also answer to Interrogatory No. 29, below.
43
44
45
46
47

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERE TO - 21

[15934-0006-000000/SL050700.056]

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WSDCC's investigation is ongoing and it will supplement its answer to the extent the investigation uncovers additional responsive information.

	(a)	(a)	(a)	(a)	(a)	(a)	(c)	(c)	(d)
	Full name of unlawful voter (or other identification of vote if name not available)	residence address [if voter name available]	phone [if voter name available]	voter ID/ registration number [if voter name available]	date of birth [if applicable]	county & precinct of that vote	Error, etc. you claim caused that unlawful vote to be counted	candidate for whom you claim that unlawful vote was apparently counted	type of evidence you rely upon to show candidate for whom that unlawful vote was apparently counted
1	Voter #1								
2	Voter #2								
3	Voter #3								

INTERROGATORY NO. 22: Please identify every person with any knowledge concerning your answer to Interrogatory Nos. 17-21 above, along with a brief description of the subject matter of that person's knowledge.

ANSWER:

County election officials have knowledge relating to unlawful votes that may have been counted and lawful votes that may not have been counted. See also answer to Interrogatory No. 15.

INTERROGATORY NO. 23: Please identify every document that supports, is inconsistent with, or otherwise relates to your answer to Interrogatory Nos. 17-21 above.

ANSWER:

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERE TO - 22

[15934-0006-000000/SL050700.056]

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- 1 (e) identify every person with any knowledge concerning your answer to this
2 Interrogatory, along with a brief description of the subject matter of that
3 person's knowledge; and
4
5 (f) identify every document that supports, is inconsistent with, or otherwise
6 relates to your answer to this Interrogatory.
7

8 **ANSWER:**
9

10 WSDCC does not claim that any county mailed military overseas and other absentee
11 voter ballots later than any state or federal law deadline. WSDCC does not have any
12 information about when such ballots may have been received by such voters and does not
13 have any information to suggest that such voters were disenfranchised by administrative
14 error.
15
16
17
18
19
20
21

22 **Counting Of Provisional Ballots**

23 *The Election Contest Petition states that "many provisional ballots were counted*
24 *without any determination being made that the voter was entitled to vote or had not already*
25 *voted" (Sec. VI B.2)).*

26 *The following Interrogatory asks you to fully disclose your facts (if any) relating to*
27 *those allegations in addition to the facts you disclosed in your answers to Interrogatory Nos.*
28 *13-23 above.*
29
30
31

32 **INTERROGATORY NO. 29:** With respect to the 2004 Governor's election,
33 please:
34
35

- 36 (a) state the name of every county in which you claim provisional ballots
37 were counted without a determination being made that the voter was
38 entitled to vote or had not already voted;
39
40 (b) for each county you list, state the total number of provisional ballots you
41 claim were counted without a determination being made that the voter
42 was entitled to vote or had not already voted;
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RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERE TO - 29

[15934-0006-000000/SL050700.056]

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- 1 (c) state whether you claim any of the gubernatorial candidates or their
2 campaigns were in any way responsible for the counting of provisional
3 ballots without determining that the voter was entitled to vote or had not
4 already voted - and if you claim any of them were, state for each
5 candidate or campaign exactly what you claim that responsibility was;
6
7
8 (d) identify every person with any knowledge concerning your answer to this
9 Interrogatory, along with a brief description of the subject matter of that
10 person's knowledge; and
11
12 (e) identify every document that supports, is inconsistent with, or otherwise
13 relates to your answer to this Interrogatory.
14

15 **ANSWER:**

16
17 (a) & (b) Adams (108), Benton (37), Chelan (unknown), Cowlitz (13), Island (27),
18 Jefferson (6), King (unknown), Pierce (unknown), Spokane (3), Stevens (560), Walla Walla
19 (342), Whatcom (17) and Whitman (783).
20
21

22 (c) The WSDCC does not claim that any of the gubernatorial candidates or their
23 campaigns were in any way responsible for the counting of provisional ballots without
24 determining that the voter was entitled to vote or had not already voted.
25
26

27 (d) County election officials in the above-listed counties have knowledge related to
28 how those counties processed provisional ballots.
29
30

31 (e) WSDCC will make all documents in its possession, custody or control available
32 for inspection and/or copying. In addition, attached hereto as Exhibit B is an index listing
33 all discovery responses from the various counties that WSDCC has received as of yesterday
34 morning. WSDCC will provide a copy of any such discovery responses at the Secretary's
35 request. WSDCC also has discovery and public records requests outstanding that might
36 result in the discovery of additional responsive documents.
37
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44

45 WSDCC's investigation is ongoing and it will supplement its response to the extent
46 the investigation uncovered additional responsive information or documents.
47

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERE TO - 30

[15934-0006-000000/81.050700.056]

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1 **INTERROGATORY NO. 39:** Did each of the persons you were asked to identify
2
3 in the preceding Interrogatory read the Introduction, Five General Reminders, and Seven
4
5 Definitions at the beginning of these discovery requests? If your answer is "no", please
6
7 identify the persons who did not read the Introduction, General Reminders, and Definitions,
8
9 and state all of that person's reasons for failing to read them.

10 **ANSWER:**

11 Yes.

12
13
14
15
16 Objections and Responses submitted this 8th day of April, 2005.

17
18
19
20 **PERKINS COIE LLP**

21 By William C. Rava
22 Kevin J. Hamilton, WSBA No. 15648
23 William C. Rava, WSBA No. 29948
24 Beth Colgan, WSBA No. 30520
25 Attorneys for Intervenor Respondent
26 Washington State Democratic Central
27 Committee
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RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERETO - 39

[15934-0006/SL050700.036]

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EXHIBIT J

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THE HONORABLE JOHN E. BRIDGES

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CHELAN COUNTY

TIMOTHY BORDERS et al.,

 Petitioners,

 v.

KING COUNTY et al.,

 Respondents.

 and

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE,

 Intervenor-Respondent.

NO. 05-2-00027-3

PETITIONERS' SECOND
INTERROGATORIES AND REQUESTS
FOR PRODUCTION TO
WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE

AND THE WASHINGTON STATE
DEMOCRATIC CENTRAL
COMMITTEE'S ANSWERS,
RESPONSES AND OBJECTIONS
THERE TO

PETITIONERS' SECOND
INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO WSDCC AND WSDCC'S
ANSWERS, RESPONSES AND
OBJECTIONS THERETO - 1

[15934-0006-00000/SL050940.090]

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1 extent it uncovers information that would change this response, WSDCC will supplement its
2 answer.
3
4

5
6
7 **REQUEST FOR PRODUCTION NO. 3:** Produce all documents supporting or
8 negating the contention in your answer to Interrogatory No. 3 or tending to show that such
9 contention is more or less likely to be true.
10
11

12
13 **RESPONSE:** WSDCC refers Petitioners to its answer to Interrogatory No. 1 and
14 Request For Production No. 1, above.
15
16

17
18
19 **INTERROGATORY NO. 4:** Do you contend that the number of Illegal Votes
20 given to Gregoire would not, if taken from her, reduce the number of her legal votes below
21 the number of legal votes given to Rossi? If so, state the facts on which this contention is
22 based and identify all persons with knowledge of facts supporting or negating this
23 contention or tending to show that the contention is more or less likely to be true.
24
25

26
27 **ANSWER:** Yes. To date it is apparent that to the extent there were Illegal Votes
28 given to Gregoire, there were also at least as many, if not more, Illegal Votes given to Rossi.
29 For example, in response to WSDCC's discovery Petitioners identified a number of
30 allegedly Illegal Votes, more than 90 percent of which were allegedly cast in King County.
31 Without regard to the integrity of this data—a significant number of these allegedly Illegal
32 Votes are in fact legitimate, see Ex. D—(1) those voters who are alleged by Petitioners to be
33 Illegal Voters and who have disclosed their vote have more often than not in fact been votes
34 for Rossi, and (2) WSDCC is not aware of who the vast majority of these allegedly Illegal
35 Votes were given to (and certainly no such evidence has been produced to date by
36
37
38
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PETITIONERS' SECOND
INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO WSDCC AND WSDCC'S
ANSWERS, RESPONSES AND
OBJECTIONS THERETO - 7
[15934-0906-000000/SL050940:099]

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1 Petitioners) and therefore is not aware of any information that would suggest that Governor
2
3 Gregoire was given more Illegal Votes than Rossi. In any event, as our Supreme Court has
4
5 emphasized with respect to Illegal Votes, if no evidence is produced showing for whom the
6
7 elector voted, such votes "must be treated between the parties as an legitimate vote. Neither
8
9 of the candidates were responsible for the manner in which the vote got into the ballot box,
10
11 and, both being innocent of wrongdoing, it would be an injustice to charge the error to either
12
13 of them." *Hill v. Howell*, 70 Wash. 603, 610-611 (1920).

14
15 WSDCC's investigation is ongoing and to the extent it uncovers information that
16
17 would change this response, WSDCC will supplement its answer.
18
19

20
21 **REQUEST FOR PRODUCTION NO. 4:** Produce all documents supporting or
22
23 negating the contention in your answer to Interrogatory No. 4 or tending to show that such
24
25 contention is more or less likely to be true.
26

27 **RESPONSE:** WSDCC refers Petitioners to its answer to Interrogatory No. 1 and
28
29 Request for Production No. 1, above.
30
31

32
33 **INTERROGATORY NO. 5:** Do you contend that precinct election boards
34
35 committed no error, neglect, or misconduct in the Gubernatorial Election? If so, state the
36
37 facts on which this contention is based and identify all persons with knowledge of facts
38
39 supporting or negating this contention or tending to show that the contention is more or less
40
41 likely to be true.
42

43 **ANSWER:** No. WSDCC is aware of the following instances in which error,
44
45 neglect or misconduct may have been committed in the 2004 General Election: (1) Certain
46
47

PETITIONERS' SECOND
INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO WSDCC AND WSDCC'S
ANSWERS, RESPONSES AND
OBJECTIONS THERETO - 8

[15934-0006-000000;ST.0509-40.090]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

1 provisional ballots were counted that should not have been counted (*see, e.g.*, WSDCC's
2 answers to Interrogatories Nos. 11 and 16 in Petitioners' First Requests and an April 1
3 newspaper article in the *Seattle Post-Intelligencer*
4 http://seattlepi.nwsourc.com/local/218434_provisional01x.html); (2) Certain absentee
5 and/or provisional ballots were not counted that should have been (e.g. improperly cancelled
6 registrations); and (3) Ballots improperly cast in the name of deceased voters who have
7 admitted to the media that they voted in the Gubernatorial Election (all for Rossi). In
8 addition, WSDCC believes that certain counties may have committed error or neglect by
9 failing to restore rights to felons who had met all sentencing obligations and that felons
10 without their civil rights restored voted in the General Election (other than those identified
11 by Petitioners to date).

12 WSDCC's investigation is ongoing, and it will supplement its answers should the
13 investigation uncover additional responsive information.

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19 **INTERROGATORY NO. 6:** Do you contend that any error, neglect, or
20 misconduct by precinct election boards in the Gubernatorial Election did not result in ballots
21 being cast and/or counted in a manner not provided by law? If so, state the facts on which
22 this contention is based and identify all persons with knowledge of facts supporting or
23 negating this contention or tending to show that the contention is more or less likely to be
24 true.

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ANSWER: It is not clear what this question is asking. If it is asking whether
WSDCC contends that all ballots cast in the 2004 General Election were cast and counted in
the manner provided by law, the answer is "No." WSDCC is aware of the following

PETITIONERS' SECOND
INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO WSDCC AND WSDCC'S
ANSWERS, RESPONSES AND
OBJECTIONS THERETO - 9
[15934-0006-000000/S1.050946.090]

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Phone: (206) 359-8000
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1 categories of ballots cast in the 2004 General Election that may not have been cast and/or
2 counted in the manner provided by law: (1) Certain provisional ballots were counted that
3 should not have been counted (*see, e.g.*, WSDCC's answers to Interrogatories Nos. 11 and
4 16 in Petitioners' First Requests and an April 1 newspaper article in the *Seattle*
5 *Post-Intelligencer* http://seattlepi.nwsource.com/local/218434_provisional01x.html); (2)
6 Certain absentee and/or provisional ballots were not counted that should have been (e.g.
7 improperly cancelled registrations); and (3) Ballots improperly cast in the name of deceased
8 voters who have admitted to the media that they voted in the Gubernatorial Election (all for
9 Rossi). In addition, WSDCC believes that certain counties may have committed error or
10 neglect by failing to restore rights to felons who had met all sentencing obligations and that
11 felons without their civil rights restored voted in the General Election (other than those
12 identified by Petitioners to date).

13 WSDCC's investigation is ongoing, and it will supplement its answers should the
14 investigation uncover additional responsive information.

15 **INTERROGATORY NO. 7:** Do you contend that any error, neglect, or
16 misconduct by precinct election boards in the Gubernatorial Election was not such as to
17 procure Christine Gregoire to be declared duly elected although she did not receive the
18 highest number of legal votes? If so, state the facts on which this contention is based and
19 identify all persons with knowledge of facts supporting or negating this contention or
20 tending to show that the contention is more or less likely to be true.

21 **ANSWER:** It is not clear what this question is asking. If it is asking whether
22 WSDCC contends that there were errors by election officials but that those errors did not in

23 PETITIONERS' SECOND
24 INTERROGATORIES AND REQUESTS FOR
25 PRODUCTION TO WSDCC AND WSDCC'S
26 ANSWERS, RESPONSES AND
27 OBJECTIONS THERETO - 10

28 [15934-0006-000300787-050946,699]

29 **Perkins Coie LLP**
30 1201 Third Avenue, Suite 4800
31 Seattle, Washington 98101-3099
32 Phone: (206) 359-8000
33 Fax: (206) 359-9000

1 **INTERROGATORY NO. 12:** Identify each person you intend to call as a witness
2
3 at trial of this action, give his or her name, address, profession or occupation, and state the
4
5 substance of the facts and opinions to which the person is expected to testify and the
6
7 grounds for each such opinion.
8

9 **ANSWER:** WSDCC objects to this request as premature. WSDCC has not to date
10
11 identified any persons it intends to call as witnesses at trial. WSDCC will comply with its
12
13 obligations under the Civil Rules and any scheduling orders entered by the Court in this
14
15 action.
16

17 Objections and Responses submitted this 4th day of April, 2005.
18
19

20 **PERKINS COIE LLP**

21
22
23 By 
24

25 Kevin J. Hamilton, WSBA #15645

26 William C. Rava, WSBA #29948

27 Beth Colgan, WSBA #30520

28 Attorneys for Intervenor-Respondent

29 Washington State Democratic Central

30 Committee
31
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PETITIONERS' SECOND
INTERROGATORIES AND REQUESTS FOR
PRODUCTION TO WSDCC AND WSDCC'S
ANSWERS, RESPONSES AND
OBJECTIONS THERETO - 14

[15934-0906-GG0000/SL050940.090]

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EXHIBIT K



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March 21, 2005

VIA HAND DELIVERY

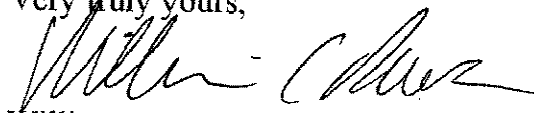
Harry J.F. Korrell, Esq.
Robert J. Maguire, Esq.
Amy Koziak, Esq.
Davis Wright Tremaine LLP
1501 Fourth Avenue, Suite 2600
Seattle, WA 98101-1688

**Re: Borders v. King County v. Washington State Democratic Central Committee
Chelan County Cause No. 05-2-00027-3**

Dear Counsel:

Further to my email exchange with Ms. Koziak last Friday, enclosed please find documents numbered WSDCC 00406-00486.

Very truly yours,


William C. Rava

WCR:slb

Enclosures

[15934-0006-000000/SL050800.036]

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March 29, 2005

VIA HAND DELIVERY

Amy H. Koziak, Esq.
Davis Wright Tremaine LLP
1501 Fourth Avenue, Suite 2600
Seattle, WA 98101-1688

**Re: Borders, et al. v. King County, et al. v. WSDCC
Chelan County Cause No. 05-2-00027-3**

Dear Amy:

Enclosed please find documents numbered WSDCC00487-WSDCC01722, the WSDCC's public records requests and related correspondence that we have so far been able to assemble. We have redacted internal emails from a small number of these documents.

Although I have been unable to reach you or David Bowman by phone, I wanted to confirm several points related to Petitioners' review of the documents produced in response to the public records requests. I understand David Bowman and Peter Schalestock, both of whom are attorneys who currently represent the Petitioners, will come to Perkins Coie tomorrow morning. We will make original documents available for review in a conference room. Messrs. Bowman and Schalestock are free to review, take notes about and flag for copying any or all of the documents. They will not mark or otherwise alter the documents. We will then copy and deliver to Petitioners any flagged documents, and Petitioners agree to pay the costs of such copying and delivery.

Very truly yours,



William C. Rava

Enclosures

[15934-0006-000000/SL050880.145]



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March 30, 2005

VIA HAND DELIVERY

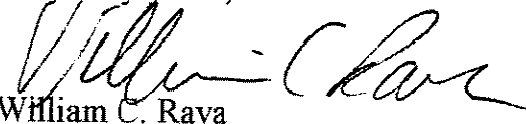
David Bowman, Esq.
Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

**Re: Borders, et al. v. King County, et al. v. WSDCC
Chelan County Cause No. 05-2-00027-3**

Dear David:

Enclosed please find CDs (numbered WSDCC01738-WSDCC01774) containing copies of databases that the WSDCC has received from the counties and others. As you know, these databases were produced to the WSDCC under the terms of various protective orders, and their use and dissemination are governed by those orders. I'm also enclosing a disc, numbered WSDCC01724, which was excluded from yesterday's production because of copying difficulties. Please note that the disc from Kitsap County (WSDCC01745) was produced to us empty; we are therefore only producing a photocopy of that disc.

Very truly yours,


William C. Rava

Enclosures

[15934-0006-000000/SL050890.039]



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March 30, 2005

VIA HAND DELIVERY

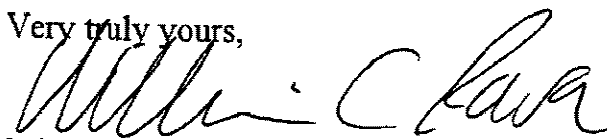
David Bowman, Esq.
Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

**Re: Borders, et al. v. King County, et al. v. WSDCC
Chelan County Cause No. 05-2-00027-3**

Dear David:

Enclosed please find CDs (numbered WSDCC01775-WSDCC01776) containing copies of databases that the WSDCC has received from the counties and others. As you know, these databases were produced to the WSDCC under the terms of various protective orders, and their use and dissemination are governed by those orders.

Very truly yours,



William C. Rava

Enclosures

[15934-0006-000000/SLO50890.174]

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March 30, 2005

VIA FACSIMILE

Amy Koziak, Esq.
Davis Wright Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

**Re: Borders v. King County v. Washington State Democratic Central Comm.
Chelan County Cause No. 05-2-00027-3**

Dear Ms. Koziak:

I have and write in response to your March 24 letter. But before addressing the issues identified in your letter, I wanted to articulate our understanding of the scope of the March 22 Rule 37 conference. You stated that an ethical screen prevented you from discussing issues specifically related to King County. We are of course not aware of the parameters of that screen. However broad its shield, though, we assume that you were also barred from reviewing the many documents and related information we provided in our discovery responses that related to King County. So, while we understand that you do not believe that any of the issues we discussed relate specifically to King County, we also understand that none of the discussion or your letter relates to King County at all.

With respect to the first two "overriding problems" identified in your letter, the WSDCC will supplement its discovery responses to identify the requests to which the produced documents are responsive. With respect to public record requests, your third "overriding problem," we asked, and you never answered, to which request you believed such requests (or a list of the same) would be responsive. We also disagree with your apparent suggestion that your discovery requests somehow dictate how the WSDCC is required to maintain documents it receives from the counties. Civil Rule 34 imposes no such obligation. During the conference, we explained that we had obtained numerous documents from the counties and other governmental entities, that these were all public documents and that Petitioners were welcome to inspect these documents at a time convenient for the parties. Nonetheless, without prejudice to our objections, following the Rule 37 conference, the WSDCC produced copies of its public records requests.

[15934-0006-000000/SL050840.192]

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Perkins Coie LLP and Affiliates

In response to your concerns, (1) on March 25 the WSDCC produced a list of the discovery responses it had received; (2) on March 29 it produced copies of public records requests; (3) on March 29 and today it produced compact discs containing copies of the various databases it has received; and (4) Messrs. Bowman and Sines today reviewed documents produced by the counties and others in response to WSDCC public records requests at our offices. Finally, as I mentioned in our several discussions, the WSDCC will supplement its written discovery responses and its document production as required by the Civil Rules. The WSDCC's willingness to work with Petitioners on the three "overriding problems" disposes of many of the issues identified in your chart. To the extent any issues remain, the chart below addresses them.

Interrogatory/RFP	Outstanding Issues/Parties' Positions
Interrogatory No. 3	See above.
Interrogatory No. 4	The WSDCC produced all responsive emails in the March 17 production. To the extent it discovers additional responsive emails, it will supplement its production.
Interrogatory No. 5	See above.
Interrogatory No. 7	See above.
Interrogatory No. 9	See above.
Interrogatory No. 11	See above. As the WSDCC originally answered and without waiving its stated objections, the WSDCC has some information indicating that a member of a Precinct Election Board engaged in "misconduct" in relation to the 2004 General Election. In particular, the WSDCC identified information suggesting that certain counties did not verify provisional ballots before counting them. The WSDCC is working to confirm this information and, to the extent the WSDCC's investigation uncovers additional evidence of such "misconduct," it will timely supplement its answers and/or production in accordance with the Civil Rules. To the extent the WSDCC is able to confirm that some counties did not verify provisional ballots before counting them, the WSDCC intends to contend that such votes are illegal.
Interrogatory No. 12	See above.

Interrogatory No. 13	See above. Also, as we explained, the WSDCC did search the email accounts of its attorneys for any communications between the attorneys and any persons known or suspected to be "illegal voters." Any responsive emails were produced. The Civil Rules require, and the WSDCC hereby renews its demand that, Petitioners produce all such communications between counsel for Petitioners (and any other agents of Petitioners) and any persons known or suspected to be "illegal voters."
Interrogatory No. 14	See above. The WSDCC will supplement its answer to list specific "illegal voters" alleged to have cast ballots for Gregoire, all of whom are mentioned by name in the public reports and newspaper articles already produced.
Interrogatory No. 16	See above. As the WSDCC originally answered and without waiving its stated objections, the WSDCC has some information indicating that a member of a Precinct Election Board engaged in "misconduct" in relation to the 2004 General Election. In particular, the WSDCC identified information suggesting that certain counties did not verify provisional ballots before counting them. The WSDCC is working to confirm this information and, to the extent the WSDCC's investigation uncovers additional evidence of such "misconduct," it will timely supplement its answers and/or production in accordance with the Civil Rules. To the extent the WSDCC is able to confirm that some counties did not verify provisional ballots before counting them, the WSDCC intends to contend that such votes are illegal.
Interrogatory No. 18	See above. The WSDCC will supplement its answer to allege additional illegal voters and will provide information relating to those illegal voters to Petitioners as soon as its investigation is complete. The WSDCC currently believes that it will be able to provide such information no later than May 1, 2005. The WSDCC also continues to believe that the Petitioners excuse for failing to provide the same information is baseless. Nonetheless, and in the interest of streamlining this matter, the WSDCC would consider stipulating that it, the WSRP and Petitioners had comprehensive voter registration lists prior to the 2004 General Election.

Interrogatory No. 21	See above, and in particular see the responses to Interrogatories Nos. 11 and 16. In addition, the WSDCC is investigating whether felons may have voted in certain counties. The WSDCC has produced the databases with which it is currently conducting this investigation. To the extent this investigation uncovers evidence that felons voted in these counties, the WSDCC will supplement its answer to allege additional illegal voters and will provide information relating to those illegal voters to Petitioners as soon as its investigation is complete. The WSDCC currently believes that it will be able to provide such information no later than May 1, 2005.
RFP 1	See above.
RFP 3	See above.
RFP 4	See above. The WSDCC will supplement its answer to clarify that it did conduct some training of poll watchers and will produce responsive documents. We disagree with your characterization of the March 22 discussion on this point, however. In that conversation, you continued to suggest that training materials might support a fraud claim, a suggestion that conflicts directly with repeated assertions by Petitioners and the WSRP that they could not and would not seek to show fraud in this case. And, of course, the Contest Petition does not contain a fraud claim. Your suggestion was also simply offensive, and we told you as much. Finally, I mentioned several organizations other than the WSDCC that could have been responsible for training poll watchers; I did not state that these organizations were in fact responsible for training poll watchers.
RFP 7 and 8	We do not recall discussing who may or may not be clients of Perkins Coie and do not, in any event, see how these requests involve Perkins Coie. Request No. 7 relates to communications between David McDonald and certain parties, none of which is Perkins Coie. Request No. 8 relates to communications between Jenny Durkan and certain parties, none of which is Perkins Coie. You are correct, though, that the WSDCC is asserting that Jenny Durkan is an attorney for Gov. Gregoire and was an attorney for her campaign and that the privilege therefore attaches to all potentially responsive communications.

Amy Koziak, Esq.
March 30, 2005
Page 5

Please contact me if I can provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "William C. Rava". The signature is fluid and cursive, with the first name "William" being more prominent than the last name "Rava".

William C. Rava



William C. Rava
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April 7, 2005

VIA HAND DELIVERY

David Bowman, Esq.
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2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

**Re: Borders, et al. v. King County, et al. v. WSDCC
Chelan County Cause No. 05-2-00027-3**

Dear David:

I am enclosing the following supplemental documents:

- (1) Documents numbered WSDCC01777-WSDCC01908. We have withheld WSDCC01823, WSDCC01881 and WSDCC01900-01905 as privileged and/or non-responsive.
- (2) CDs numbered WSDCC001909-01912.
- (3) BENT00335-00421.
- (4) LINC00034-00051.

Very truly yours,


William C. Rava

Enclosures

[15934-0006-000000/SL050970.138]



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April 15, 2005

VIA HAND DELIVERY

David Bowman, Esq.
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2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

**Re: Borders, et al. v. King County, et al. v. WSDCC
Chelan County Cause No. 05-2-00027-3**

Dear David:

I am enclosing the following:

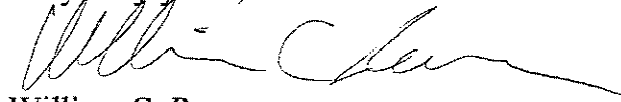
- (1) Document WSDCC 00769a supplementing our earlier production;
- (2) Documents numbered WSDCC 01934-02131;
- (3) ADAM 00031-00034;
- (4) STEV 00011-00027;
- (5) CHEL 00865-00874;
- (6) DOUG 00135-00148;
- (7) GRAN 00003-00050;
- (8) YAKI 00230-00236;

[15934-0006-000000/SL051050.184]

David Bowman, Esq.
April 15, 2005
Page 2

- (9) SPOK 00269-00238;
- (10) ADAM 00008-00029;
- (11) CHEL 00863-00864;
- (12) CLAL 00001-000010;
- (13) COWL 00265-00286;
- (14) FERR 00177-00192
- (15) FRAN 00007-00009;
- (16) KITS 00471-00478;
- (17) OKAN 00065-00066;
- (18) STEV 00001-00010; and
- (19) YAKI 00212-00229.

Very truly yours,



William C. Rava

Enclosures



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April 19, 2005

VIA FACSIMILE

David Bowman, Esq.
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2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

**Re: Borders, et al. v. King County, et al.
WSDCC Supplemental Discovery Responses
Alleged Felons Listed in Bowman Exhibit 1 Who Did Not Vote**

Dear David:

I write to supplement WSDCC's discovery responses. Enclosed herewith please find four King County poll book pages, each of which shows that one of the alleged felons listed in Exhibit 1 to your declaration was not issued a ballot at the polls on election day and did not sign his or her name in the poll books.

<i>Felon Number (from Bowman Exhibit 1)</i>	<i>Name</i>	<i>Poll Book Document Number</i>
75	Thurston, Ricky D.	KC05596
96	Smiley, Charles H.	KC05565
197	Merkerson, Gregory	KC05486
437	Worley, Pearl Ann	KC05631

[15934-0006-000000/SL051090.235]

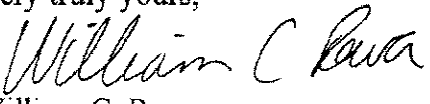
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Perkins Coie, LLP and Affiliates

David Bowman, Esq.
April 19, 2005
Page 2

Our investigation is ongoing, and we will further supplement our discovery answers as appropriate.

Very truly yours,


William C. Rava

cc: Thomas Ahearne

MARK WHEN ISSUED	MARK SB FOR SPOILED BALLOT	✓ FOR SPECIAL/ CHALLENGED BALLOT	BALLOT NO. GIVEN VOTER	BALLOT CODE REGISTRATION NO.	NAME AND ADDRESS	DOB / Gender
1				15 REGISTRATION NO. 810123418	WOOD, C S 39407 236TH AVE SE	
2	1		30	15 REGISTRATION NO. 77086191	WOODARD, GEORGE H 38323 247TH AVE SE	
3	1		20	15 REGISTRATION NO. 860248280	WOODARD, NANCY L 38323 247TH AVE SE	
4				15 REGISTRATION NO. 921125372	WORCESTER, LISA 39008 232ND AVE SE	
5				15 REGISTRATION NO. 921064497	WORCESTER, STEVE S 39008 232ND AVE SE	
6				27 REGISTRATION NO. 930361011	WORLEY, PEARL ANN 41333 236TH AVE SE	
7	1		93	15 REGISTRATION NO. 800168881	WRIGHT, AGNES J 39019 244TH AVE SE	
8				15 REGISTRATION NO. 940432006	WRIGHT, BLAINE D 23618 SE 380TH ST	
9	1		94	15 REGISTRATION NO. 930277274	WRIGHT, CHESTER JR 39019 244TH AVE SE	
10				15 REGISTRATION NO. 30462840	WRIGHT, DONNA J 23618 SE 380TH ST	

103

REGISTERED VOTER OF THE STATE OF WASHINGTON QUALIFIED TO CAST A BALLOT AT THIS ELECTION AND THAT I HAVE VERIFIED MY ADDRESS AS IT APPEARS ON THIS PAGE.

SIG. TOTAL THIS PAGE :

PRECINCT NAME : SEA 37-1907		1907		PAGE : 1493		DOB / Gender	
MARK WHEN ISSUED	MARK SB FOR SPOILED BALLOT	✓ FOR SPECIAL / CHALLENGED BALLOT	BALLOT NO. GIVEN VOTER	BALLOT CODE REGISTRATION NUMBER	NAME AND ADDRESS	DOB	Gender
1				BALLOT CODE 11 REGISTRATION NO. 990589377	1 SCHUMACHER, JEFFREY G 3310 E SPRING ST # 200		
2				BALLOT CODE 11 REGISTRATION NO. 870168233	2 SCHUTT, NANCY K 911 32ND AVE		
3				BALLOT CODE 11 REGISTRATION NO. 10044171	3 SEALS, SHONDA R 3210 E COLUMBIA ST		
4				BALLOT CODE 11 REGISTRATION NO. 952443	4 SEBASTIAN, PAULA D 3405 E MARION ST		
5				BALLOT CODE 11 REGISTRATION NO. 99052276	5 SELLERS, REBECCA R 3400 E MARION ST		
6				BALLOT CODE 11 REGISTRATION NO. 990416490	6 SHAFFER STRATHMAN, WILLIAM EUG 3310 E SPRING ST # 307E		
7				BALLOT CODE 11 REGISTRATION NO. 990660234	7 SIMEN, KAREN K 3125 E SPRING ST		
8				BALLOT CODE 11 REGISTRATION NO. 930009261	8 SIMPSON, V E Must Update Voter Registration 924 34TH AVE		
9				BALLOT CODE 11 REGISTRATION NO. 764418	9 SMILEY, CHARLES H JR 817 32ND AVE		
10				BALLOT CODE 11 REGISTRATION NO. 20317213	10 SMITH, BARBARA E 623 33RD AVE		

I HEREBY DECLARE UNDER PENALTIES OF PERJURY THAT I AM A REGISTERED VOTER OF THE STATE OF WASHINGTON QUALIFIED TO CAST A BALLOT AT THIS ELECTION AND THAT I HAVE VERIFIED MY ADDRESS AS IT APPEARS ON THIS PAGE.

KC 05565

SIG. TOTAL THIS PAGE

901

PRECINCT NAME : SEA 37-1838 1838 PAGE : 2624

MARK 1 WHEN ISSUED	MARK SB FOR SPOILED BALLOT	✓ FOR SPECIAL/ CHALLENGED BALLOT	BALLOT NO. GIVEN VOTER	BALLOT CODE REGISTRATION NO.	NAME AND ADDRESS	DOB / Gender
1			242	BALLOT CODE 11 REGISTRATION NO. 980588864	TEKLE, HENOK H 1123 26TH AVE S	
2				BALLOT CODE 11 REGISTRATION NO. 520138	TEKLE, HENOK H 1123 26TH AVE S	
3			21	BALLOT CODE 11 REGISTRATION NO. 20253875	TEKLE, ROBEL H 1123 26TH AVE S	
4				BALLOT CODE 11 REGISTRATION NO. 980666950	THOMAS, ERNEST R 2436 S IRVING ST	
5				BALLOT CODE 11 REGISTRATION NO. 800892775	THOMAS, JAMES 2442 S IRVING ST	
6				BALLOT CODE 11 REGISTRATION NO. 980211421	THOMAS, SINA B 2442 S IRVING ST	
7				BALLOT CODE 11 REGISTRATION NO. 950417790	THOMAS, TEROSHUA SHEREE 2428 S JUDKINS ST	
8			57	BALLOT CODE 11 REGISTRATION NO. 880448218	THOMPSON, CHARLES E 904 25TH AVE S	
9				BALLOT CODE 11 REGISTRATION NO. 428857	THURSTON, RICKEY D 924 24TH AVE S	
10			100	BALLOT CODE 11 REGISTRATION NO. 720746158	Mist Update Voter Registration TICE, OLA MAE 917 28TH AVE S # 2	

MY ADDRESS AS IT APPEARS ON THIS PAGE.

KC 05596

SIC TOTAL THIS PAGE

4

PRECINCT NAME: SEA 43-1888

1888

PAGE: 1164

Bar Code

MARK 1 WHEN ISSUED
MARK SB FOR SPOILED BALLOT





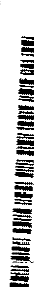





✓ FOR SPECIAL / CHALLENGED BALLOT

BALLOT NO. GIVEN VOTER

BALLOT CODE REGISTRATION NO. NUMBER

NAME AND ADDRESS

DOB / Gender

1		<input checked="" type="checkbox"/>		31	BALLOT CODE 3 REGISTRATION NO. 390482038	1	MEERKINS, VAUGHN KEVIN 1818 E DENNY WAY # 201	
2					BALLOT CODE 3 REGISTRATION NO. 30091761	2	MEERKSON, GREGORY 1808 18TH AVE	
3					BALLOT CODE 3 REGISTRATION NO. 990664839	3	MEYER, DWAIN T 1808 E JOHN ST	
4					BALLOT CODE 3 REGISTRATION NO. 840287730	4	MEYER, JOANNE 1711 E THOMAS ST	
5					BALLOT CODE 3 REGISTRATION NO. 40254722	5	MIKA, AVIRVIL 1815 E THOMAS ST # D	
6					BALLOT CODE 3 REGISTRATION NO. 720624796	6	MILLER, GLORIA N 102 18TH AVE E	
7				169	BALLOT CODE 3 REGISTRATION NO. 990656657	7	MILLER, JUSTUS L 1818 E DENNY WAY # 203	
8				71	BALLOT CODE 3 REGISTRATION NO. 960914406	8	MILLER, PETER E 1819 E DENNY WAY	
9					BALLOT CODE 3 REGISTRATION NO. 990629847	9	MINLIT, TONI MARIE 1640 18TH AVE # 1	
10					BALLOT CODE 3 REGISTRATION NO. 254363	10	MITCHELL, JAMES JACKSON 119 19TH AVE E # 207	

I HEREBY DECLARE UNDER PENAL TIES OF PERJURY THAT I AM A REGISTERED VOTER OF THE STATE OF WASHINGTON QUALIFIED TO CAST A BALLOT AT THIS ELECTION AND THAT I HAVE VERIFIED MY ADDRESS AS IT APPEARS ON THIS PAGE.

SIG. TOTAL THIS PAGE :

KC 05486

EXHIBIT L

-----Original Message-----

From: Hamilton, Kevin J.
Sent: Thursday, April 14, 2005 3:53 PM
To: @Porter, Don
Cc: Engrav, Rebecca S.
Subject: King County Document Production
Importance: High

Don,
In our response to your motion for a protective order, we listed five categories of documents we had requested from you that we must have prior to the depositions of Mssrs. Logan and Huennekens. In your filings and in court, you indicated that you would provide this information prior to the rescheduled depositions. It is now just a few days prior to the depositions, and it appears to us that we are still missing the following documents (the numbers correspond to the categories in our response to your motion):

(1) Poll book pages, provisional ballot, or absentee ballot envelopes for the alleged illegal voters listed in our letters of 3/8, 3/11, and 3/23. It appears to us that we are missing documents for 54 of the voters listed in our 3/8 request, excluding the 33 for whom your staff has not been able to find documents. A spreadsheet listing these 54 names is attached. If you think you have produced these documents, it would be very helpful to us if you could let us know the date on which you produced the documents for these individuals. In response to our 3/23 request, you said you provided documents for all but 9 voters, but there is a 10th for whom you have not provided documents: Donald Waters. You also asked for more information regarding 4 of these voters. Larry Richardson's voter ID number is 980311201. For the others, we will send further information if we can find it.

(2) Documents regarding rejected provisional ballots. We have received the envelopes for the rejected provisional ballots, but we still have not received documents relating to your switch from 1791 rejected provisional ballots (as you reported in November 2004) to over 4000 rejected provisional ballots (as you reported in January 2005, but we did not know until March 2005). There must be internal documents regarding this switch and the amended report. For example, there must be emails or other documents between your staff that led to the creation of the amended report. Such documents are included within our PDA request of 3/8. We also have not received documents supporting the rejection of the over 4000 ballots, including those indicating the reasons for the rejections. Please produce these documents immediately.

(3) Documents regarding prematurely counted provisional ballots. In Will's fax to you of 3/24, we asked for confirmation that the small stack of documents you produced on 3/22 are the entire universe of documents responsive to this request. Please confirm.

(5) Documents relating to problems with the voter registration database. As indicated in our response brief and Will's fax to you of 3/24, we have some internal emails regarding problems with the voter registration database. We still have not received any additional documents (for example, communications with the vendor?) or confirmation that are no other responsive documents.

Please let us know immediately the status of these requests.

In addition, attached is an updated comprehensive chart showing what is outstanding from all our requests to you. As you know, in the spirit of cooperation we did not specifically indicate in our response to your motion that all of these documents were a necessity prior to the depositions, but we do insist that you respond to them in a timely fashion, given the approaching trial date. If you disagree with any of our assessments as to what is outstanding, please let me know; we would be happy to talk through the list.



records missing
from 3-8-05 re...



SL050940.209.DOC
(61 KB)

EXHIBIT M

FILED

JAN 12 2005
CHELAN COUNTY CLERK
 ROLL # _____

THE HONORABLE T.W. SMALL

SUPERIOR COURT FOR THE STATE OF WASHINGTON
 FOR CHELAN COUNTY

TIMOTHY BORDERS, ET AL.,

NO. 05-2-00027-3

Petitioners,

~~[PROPOSED]~~ STIPULATED ORDER

v.

KING COUNTY, ET AL.,

Respondents,

and

WASHINGTON STATE DEMOCRATIC
 CENTRAL COMMITTEE,

Applicant Intervenor-
 Respondent

THIS MATTER comes before the Court on Applicant Intervenor-Respondent
 Washington State Democratic Central Committee's ("WSDCC") Motion to Intervene. The

[PROPOSED] ORDER - 1

[00000-0000/SL050110.000]

Perkins Cole LLP
 1201 Third Avenue, Suite 4800
 Seattle, Washington 98101-3099
 Phone: (206) 359-8000
 Fax: (206) 359-9000

Court has reviewed WSDCC's Motion, and any opposition and reply in response thereto, and all declarations filed in support and in opposition to the Motion. Petitioners stipulate that WSDCC should be permitted to intervene. Therefore, being fully advised in the premises, it is hereby ORDERED that:

1. WSDCC's Motion to Intervene is hereby GRANTED.

2. *The oral motion of the Libertarian Party of Washington*
ENTERED this *12* day of January, 2005.

John Bridges
The Honorable T. W. Small

Presented by:

William C. Rava
Kevin J. Hamilton, WSBA #15648
William C. Rava, WSBA #29948
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101

Jenny A. Durkin, WSBA #15751
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Russell J. Speidel, WSBA #12838
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Respondent WSDCC

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Attorneys for Petitioners

Steven J. Kinn, WSBA #12984
Spokane County Prosecuting Attorney's
Office
W. 1116 Broadway
Spokane, WA 99260
Attorneys for Spokane County and Spokane
County Auditor

**State is hereby GRANTED.*

3. *Any party not stipulating to this Order shall have an opportunity to object hereto, provided, however, such objection shall be filed with the Court and served on all parties on or before 11:00 a.m. on Friday, January 14, 2005.*

4. *The entry of this Order * **

[PROPOSED] ORDER - 2

(JC00074002WSL050110.091)

Perkins Coie LLP
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Thomas F. Ahearn, WSBA #14844
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Hugh D. Spitzer, WSBA #5827
Marco J. Magnano, WSBA #1293
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Gary Riesen, WSBA #7195
Chelan County Prosecuting Attorney's
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Wenatchee, WA 98807-2596
Attorneys for Chelan County Prosecuting
Attorney's Office

** shall not prejudice the right of any party to timely file an Affidavit of Prejudice.

[PROPOSED] ORDER - 3
FUGITIVE-BUILD-BOOKING/ST 034110 0911

Perkins Cole LLP
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County and Rob Terwilliger, Snohomish
County Auditor

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P.O. Box 2596
Wenatchee, WA 98807-2596
Attorneys for Respondents Chelan County
and Chelan County Auditor

J. Micks

WSBA 18847

Four: LIBERTARIAN PARTY of Washington State

[PROPOSED] ORDER - 4

1149837 34444 \ 0501 11 1031

Perkins Cole Ltd
1101 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone (206) 359-8000
Fax (206) 359-9000

Jan-12-05 10:51am From:Walla Walla Prosecuting Attorney

5095298720

T-274 P.003/003 F-794

Presented by:

Thomas F. Ahearn, WSBA #14844
Jeffery A. Richard, WSBA #28219
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James L. Nagle WSBA #6637
Walla Walla County Prosecuting
Attorney
240 W. Alder, Suite 201
Walla Walla WA 99362-2807
509-527-3232
509-529-6720 (fax)
Attorneys for Walla Walla County
and Karen Martin, Auditor

[PROPOSED] ORDER - 5

[15934-6606/\$1,050,110.093]

Perkins Cole LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

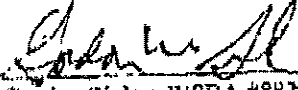
JAN-12-2005 WED 07:28 AM SNO PROS ATTY-CIVIL

FAX NO. 425 388 6333

P. 04

Presented by:

Thomas F. Ahearn, WSBA #14844
Jeffery A. Richard, WSBA #28219
Hugh D. Spitzer, WSBA #5827
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Wenatchee, WA 98807-2596
Attorneys for Respondents Chelan County
and Chelan County Auditor

[PROPOSED] ORDER - 6
{000001-00002/51 0501 10 093}

Perkins Cole LLP
1201 Third Avenue, Suite 4800
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JAN-11-2005 17:23 FROM: SPD CO PROSECUTOR PR 5094773987

TO: 912063597332P140495 P: 3/4

Presented by:

Thomas F. Ahearne, WSBA #14844
Jeffery A. Richard, WSBA #28219
Hugh D. Spitzer, WSBA #5827
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P.O. Box 2596
Wenatchee, WA 98807-2596
Attorneys for Chelan County Prosecuting
Attorney's Office

[PROPOSED] ORDER - 7

[40000] [0000 000000-81050110 093]

Perkins Cole LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

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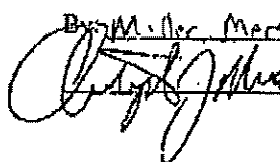
PAGE 02

Presented By:

Walla Walla County and its Auditor

Franklin County and its Auditor

By: _____

By: W. Miller, Mertens & Spanin PLLC W. Miller, Mertens & Spanin PLLC

Island County and its Auditor

King County and its Auditor

By: _____

By: _____

Lewis County and its Auditor

Stevens County and its Auditor

By: _____

By: _____

[PROPOSED] ORDER - 8

[15934 2002/SL050117 093]

Perkins Cole LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

01/12/2005 00:40 FAX 206 298 0191

KING CTY PROSECUTING ATT

007/007

Presented By:

Walla Walla County and its Auditor

Franklin County and its Auditor

By: _____

By: _____

Island County and its Auditor

King County and its Auditor

By: _____

By: *Thomas W. Kuffel, Esq.**USBA # 2011.8**Attorney for King Co. Dean Logan*

Lewis County and its Auditor

Stevens County and its Auditor

By: _____

By: _____

[PROPOSED] ORDER - 9
(15934-0006/SL050110 093)

Perkins Cole LLP
1201 Third Avenue, Suite 4000
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

JAN 12 2005 10:39 6660310

STEVENS COUNTY

#0831 P.002/002

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47**Presented By:**

Walla Walla County and its Auditor

Franklin County and its Auditor

By: _____

By: _____

Island County and its Auditor

King County and its Auditor

By: _____

By: _____

Lewis County and its Auditor

Stevens County and its Auditor

By: _____

By:  _____Lloyd Nickel, WSBA #9065
Deputy Prosecuting Attorney

[PROPOSED] ORDER - 10

[15934-00000000000000000000]

Perkins Cole LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3000
Phone: (206) 359-8000
Fax: (206) 359-9000

Presented By:

Walla Walla County and its Auditor

By: _____

Island County and its Auditor

By: _____

GREGORY M. BANKS
PROSECUTING ATTORNEY
WSBA # 22926, OIN 91047

Lewis County and its Auditor

By: _____

Franklin County and its Auditor

By: _____

King County and its Auditor

By: _____

Stevens County and its Auditor

By: _____

[PROPOSED] ORDER - 11
[DATE WHEN MADE FINAL]

Perkins Cole LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-5099
Phone: (206) 359-8000
Fax: (206) 359-8000

EXHIBIT N

Sipos, Charles

From: @Korrell, Harry
Sent: Wednesday, January 12, 2005 10:58 AM
To: Rava, William C.
Cc: Hamilton, Kevin J.; Burman, David J.; @Maguire, Robert
Subject: FW: Scanned document <3 pages> -- 1/12/2005 10:54:16 AM



SFX346.pdf (94 KB)

Will, here is the stipulation again. Please advise regarding the status of your effort to track down signatures as soon as possible. If you have not received all the signatures, please consider, again, my request that you simply combine this issue with the hearing on Friday. I think the judge and I know all the parties would appreciate that.

Harry.

Harry J. F. Korrell
Davis Wright Tremaine, LLP
2600 Century Square
1501 Fourth Avenue
Seattle, Washington 98101
harrykorrell@dwt.com
Direct Tel: (206) 628-7680
Direct Fax: (206) 470-3680

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-----Original Message-----

From: Seattle Scanner - Floor 27
Sent: Wednesday, January 12, 2005 10:54 AM
To: Korrell, Harry
Subject: Scanned document <3 pages> -- 1/12/2005 10:54:16 AM

This PDF file was created using the eCopy Suite of products. For more information about how you can eCopy paper documents and distribute them by email please visit <http://www.ecopy.com>
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THE HONORABLE T.W. SMALL

SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR CHELAN COUNTY

TIMOTHY BORDERS, ET AL.,

Petitioners,

v.

KING COUNTY, ET AL.,

Respondents,

and

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE,

Applicant Intervenor-
Respondent

NO. 05-2-00027-3

[PROPOSED] STIPULATED ORDER

THIS MATTER comes before the Court on Applicant Intervenor-Respondent
Washington State Democratic Central Committee's ("WSDCC") Motion to Intervene. The

1 Court has reviewed WSDCC's Motion, and any opposition and reply in response thereto,
2
3 and all declarations filed in support and in opposition to the Motion. Petitioners stipulate
4
5 that WSDCC should be permitted to intervene. Therefore, being fully advised in the
6
7 premises, it is hereby ORDERED that:
8

9
10 1. WSDCC's Motion to Intervene is hereby GRANTED.

11 ENTERED this ____ day of January, 2005.
12
13
14
15


16
17
18 The Honorable T. W. Small

19 Presented by:
20
21

22
23 Kevin J. Hamilton, WSBA #15648
24 William C. Rava, WSBA #29948
25 Perkins Coie LLP
26 1201 Third Avenue, Suite 4800
27 Seattle, WA 98101
28

29 Jenny A. Durkan, WSBA #15751
30 c/o Perkins Coie LLP
31 1201 Third Avenue, Suite 4800
32 Seattle, WA 98101
33

34
35 Russell J. Speidel, WSBA #12838
36 Speidel Law Firm
37 7 North Wenatchee Ave Suite 600
38 Wenatchee, WA 98801
39 Attorneys for Applicant Intervenors-
40 Respondent WSDCC
41
42
43
44
45
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47


Harry J.F. Korrell, WSBA #23173
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Attorneys for Petitioners

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Attorneys for Spokane County and Spokane
County Auditor

1 Presented by:
2
3
4
5

6 Thomas F. Ahearn, WSBA #14844
7 Jeffery A. Richard, WSBA #28219
8 Hugh D. Spitzer, WSBA #5827
9 Marco J. Magnano, WSBA #1293
10 Foster Pepper & Shefelman PLLC
11 1111 Third Avenue
12 Seattle, WA 98101-3299
13 Attorneys for Secretary of State Sam Reed
14
15
16
17

18 Gordon Sivley, WSBA #8837
19 Snohomish County Prosecuting Attorney's
20 Office
21 1918 Colby Ave., Suite 203
22 Everett, WA 98201-4011
23 Attorneys for Respondents Snohomish
24 County and Bob Terwilliger, Snohomish
25 County Auditor
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Stanley A. Bastian, WSBA #13415
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P.O. Box 1688
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and Chelan County Auditor

EXHIBIT 0



Davis Wright Tremaine LLP

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April 13, 2005

VIA FACSIMILE

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Counsel
April 13, 2005
Page 2



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Walla Walla, WA 99362-2807

Martin Muench, Esq.
Senior Deputy Prosecuting Attorney
Room 211 – County Courthouse
128 N. 2nd Street, Room 211
Yakima, WA 98901

Re: Borders et al. v. King County et al. v. Washington State Democratic Central Committee
Chelan County Cause No. 05-2-00027-3

Dear Counsel:

Accompanying this fax letter is a copy of a Subpoena Duces Tecum requesting production of certain records. We will arrange for service of process if necessary.

Please let us know if you will accept this fax or overnight mail delivery in lieu of service.

I will be calling you shortly to follow up on the production of documents.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in cursive script that reads 'David M. Bowman'.

David M. Bowman

Enclosures

cc: Peter Schalestock, Esq.
Harry J. F. Korrell, Esq.
Robert J. Maguire, Esq.
All Counsel

EXHIBIT P



Kevin J. Hamilton
PHONE: 206.359.8741
FAX: 206.359.9741
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February 3, 2005

BY HAND DELIVERY

The Honorable John E. Bridges
Chelan County Superior Court
Department No. 3
401 Washington Street
Wenatchee, WA 98807

Re: *Borders v. King County, et al.*
Chelan County Superior Court Cause No. 05-2-00027-3

Dear Judge Bridges:

In preparation for the hearing scheduled for this Friday, February 4, we thought it might be helpful to the Court and to the many parties to identify the various motions currently pending before the Court and to suggest a potential organization of the hearing of those motions.

A. Pending Motions

Attached as Exhibit A to this letter is what I believe to be a complete list of all of the motions filed by the various parties to this litigation and the date on which those motions were filed. I believe that those motions are currently scheduled for a hearing on Friday, February 4. As I'm sure the Court recognizes, many of these motions raise the same or similar grounds for dismissing some or all of the parties and some or all of the claims presented by Petitioners. In an effort to attempt to assist the Court in highlighting the overlap between the motions, we have compiled a summary table, attached as Exhibit B to this letter, that identifies the various issues raised by the pending motions. This summary table reflects our best attempt to identify the various issues raised by the motions for convenience only.

[15934-0006/SL050330.168]

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MENLO PARK · OLYMPIA · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

B. Presentation of Argument

With over 80 parties to this litigation, it would appear to make some sense to organize the argument of these motions in a way to maximize the efficient use of the Court's time and resources. The briefing on these motions has been thorough, is now complete, and has already provided the parties with an opportunity to be heard with respect to the motions. With that in mind, the WSDCC would respectfully suggest that the Court consider taking up the pending issues in the following sequence, with whatever time limitations (if any) the Court deems appropriate.

1. **Jurisdiction and Venue.** The WSDCC has moved to dismiss on the grounds that the Legislature has exclusive jurisdiction to hear an election contest. Several counties have joined this motion. The WSDCC has also moved for a change of venue, arguing that the state Supreme Court is the "appropriate" court under the election contest to hear an action involving a statewide election and all 39 counties. Petitioners have opposed both motions. It seems that the Court would want to address the jurisdictional and venue issue at the outset of the hearing, since the motions go to the jurisdiction of the Court to hear any part of the case.
2. **Timeliness of the Petition Under RCW 29A.68.011.** Several of the counties and county auditor respondents have moved to dismiss the Petition, or claims against specific counties or county auditors, on the grounds that the Petition was not timely filed within the 10 day period required by RCW 29A.68.011. Petitioners have opposed these motions. Because resolution of this motion could resolve the entire case, again the WSDCC suggests that it, too, be addressed close to the beginning of the hearing.
3. **Proper Parties.** Similarly, several of the counties and county auditor respondents, have moved to dismiss claims against specific counties or county auditors, on the grounds that the Petition either does not identify or articulate any claims against those counties or county auditors, or that the counties or county auditors are in any event not proper parties to such a proceeding. Petitioners oppose these motions. Again, because the resolution of these motions could result in a number of counties or county auditors being dismissed entirely from the action, the Court may want to consider addressing this issue at this point in the hearing.
4. **Sufficiency of the "Affidavits of Elector[s]" Filed by Petitioners.** Several of the counties have moved to dismiss the Petition on the grounds that the "affidavits

of electors" (required by RCW 29A.68.011) filed by the Petitioners are insufficient because they do not "set forth specifically" and with "sufficient certainty" the allegations against the specific county, the county auditor, or, indeed, against any election officials. Petitioners oppose the motions.

5. Motion to Dismiss Causes for Election Contest. The WSDCC has moved to dismiss the Petition and various claims within it. The motion has been joined by several of the counties. The motion seeks dismissal on the grounds that, to the extent that this (or any) Court has jurisdiction over an election contest involving an Article III, § 1 office by virtue of a delegation of authority from the Legislature, then that authority is strictly controlled and defined by the statutory terms. The issues raised by these motions may be grouped as follows:

- (a) Whether Petitioners must establish "misconduct" by an election official under RCW 29A.68.020(1), not mere administrative error,
- (b) Whether Petitioners, to include in a claim of "illegal votes" those votes that are cast by improperly registered voters, must establish pursuant to RCW 29A.68.020(5)(b), that the right of those voters to vote was challenged before the election,
- (c) Petitioners must establish under RCW 29A.68.070, .080, and .110 – whether their claim is based upon allegations of "misconduct" by election officials or "illegal votes" – that the misconduct or illegal votes changed the outcome of the election, i.e., whether Petitioners must prove that the "amount of illegal votes has been given to the person whose right is being contested (here, Governor Gregoire), that, if taken from that person," would change the result of the election, "after deducting therefrom the illegal votes that may be shown to have been given to the other person (here, Mr. Rossi)." RCW 29A.68.110.

Petitioners oppose these motions.

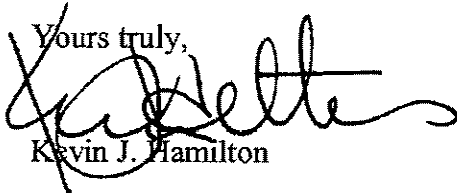
6. Availability of Relief. Finally, the WSDCC, again joined by several counties, has filed a motion to strike the relief sought by Petitioners (a new special election for the Governor) on the grounds that such relief is neither authorized by the terms of the election contest statute, RCW Chap. 29A.68, nor consistent with a variety of Constitutional terms relating to elections and the Office of Governor. Several

Hon. John E. Bridges
February 3, 2005
Page 4

counties have additionally argued that the Court has no jurisdiction or power to order them to conduct an election. Petitioners, of course, oppose the motion. We appreciate that in the ordinary course, discussion of any remedy would seem premature until the case was concluded. However, in the particular circumstances of this case it is in the public's interest to have this issue resolved now. Mr. Rossi has publicly and repeatedly declared that the sole remedy he seeks through this litigation is what he terms a "revote." If that remedy is not an option, this contest can be resolved immediately and without further proceedings.

Thank you again for your courtesies and we look forward to appearing before you on Friday.

Yours truly,

A handwritten signature in black ink, appearing to read "Kevin J. Hamilton", written over a horizontal line.

Kevin J. Hamilton

KJH:jlj

cc: All Counsel

EXHIBIT A

DATE	FILING PARTY	DESCRIPTION
01/11/05	Respondent Stevens Co.	Motion and Declaration to Dismiss Defendants Stevens County and its Auditor, Tim Gray
01/13/05	Respondent Benton Co.	Motion to Dismiss Certain Counties and County Auditors: Benton, Jefferson, Lewis and Snohomish
01/14/05	Respondent Franklin Co.	Franklin County and Zona Lenhart's Motion to Dismiss; Memorandum in Support of Respondent Franklin County and Zona Lenhart's Motion to Dismiss
01/14/05	Respondent Pierce Co.	Pierce County and Pierce County Auditor's Joinder in Motions to Dismiss and, in the Alternative, Joinder in Motion for a Stay of Proceedings
01/14/05	Respondent Skagit Co.	Skagit County's Motion to Dismiss; Declaration of Erika Kubischta
01/18/05	Respondent King Co.	King County and Dean Logan's Motion to Dismiss; Memorandum in Support of King County and Dean Logan's Motion to Dismiss
01/18/05	Respondent Island Co.	Respondent Island County's Motion to Dismiss Election Contest Petition
01/18/05	Respondent Grays Harbor	Motion of Grays Harbor County to Join Other Respondents; Gray Harbor's Motion to Dismiss or, in the Alternative, for a Stay of Proceedings
01/18/05	Respondent Cowlitz Co.	Joinder of Cowlitz County and Kristina Swanson, County Auditor, in Motions to Dismiss and, in the Alternative, Motion for Stay of Proceedings
01/19/05	Respondent Snohomish	Snohomish County's Withdrawal of its Motion to Dismiss
01/19/05	Respondent Spokane Co.	Spokane County's Motion to Dismiss; Memorandum in Support of Respondent Vicky M. Dalton's Motion to Dismiss
01/20/05	WSDCC	WSDCC's Motion to Dismiss for Lack of Subject Matter Jurisdiction; Declaration of Will Rava
01/20/05	WSDCC	WSDCC's Motion to Dismiss for Improper Venue or, in the Alternative, to Transfer Venue; Declaration of Will Rava
01/20/05	WSDCC	WSDCC's Motion to Strike Petitioners' Requested Relief; Declaration of Will Rava

DATE	FILING PARTY	DESCRIPTION
01/20/05	WSDCC	WSDCC's Motion to Dismiss for Lack of Subject Matter Jurisdiction; Declaration of Will Rava
01/21/05	WSDCC	WSDCC's Motion to Dismiss Causes for Election Contest
01/21/05	Respondent Klickitat Co.	Memorandum of Klickitat County Auditor Diana L. Housden in Support of Intervenor's & Stevens, Benton, Franklin, Jefferson, Lewis, Snohomish, and Skagit Counties' Motion to Dismiss and Intervenor's Motion to Strike Relief
01/21/05	Respondent Ferry Co.	Joinder of Ferry County in Motion to Dismiss by All Parties Presently Scheduled to be Heard on February 4, 2005; Motion and Declaration to Dismiss Defendants Ferry County and its Auditor Clydene Bolinger
01/21/05	Respondent Wahkiakum	Joinder of Wahkiakum County and Diana L. Tischer, Wahkiakum County Auditor, in the Motion to Dismiss of Benton and Jefferson Counties
01/21/05	Respondent Lincoln Co.	Joinder of Lincoln County and Shelly Johnston, Lincoln County Auditor in the Motion to Dismiss of Benton and Jefferson Counties
01/24/05	Respondent Snohomish Co. Auditor	Bob Terwilliger, Snohomish County Auditor's Motion to Dismiss; Declaration of Bob Terwilliger

<i>Motion Filed</i>	<i>Subject Matter Jurisdiction</i>	<i>Venue</i>	<i>Timeliness</i>	<i>Proper Parties</i>	<i>Sufficiency of Declaration/Pleadings</i>	<i>Necessity of Proving Illegal Vote or Misconduct, Not Error</i>	<i>Necessity of Pre-election Challenge to Illegal Votes</i>	<i>Necessity of Proving Different Outcome</i>	<i>Availability of Relief</i>
Stevens County Motion to Dismiss (1/11/05)		X							
Motion to Dismiss by Benton, Jefferson, Lewis, and Snohomish* Counties (1/13/05)				X	X				
Pierce County Joinder and Motion to Dismiss (Benton, Jefferson, et. al.) (1/14/05)		X	X	X	X				
Skagit County Motion to Dismiss (1/14/05)				X	X				
Franklin County Motion to Dismiss (1/14/05)				X	X				
King County Motion to Dismiss (1/18/05)				X	X	X		X	
Island County Motion to Dismiss (1/18/05)		X							
Cowlitz County Joinder in Motion to Dismiss (1/18/05)		X			X				
Spokane County Motion to Dismiss (1/18/05)				X	X				
Grays Harbor County Joinder in Motions to Dismiss (1/18/05)		X	X	X	X	X		X	
WSDCC Motion to Dismiss - Subject Matter Jurisdiction (1/20/05)	X								

<i>Motion Filed</i>	<i>Subject Matter Jurisdiction</i>	<i>Venue</i>	<i>Timeliness</i>	<i>Proper Parties</i>	<i>Sufficiency of Declaration/Pleadings</i>	<i>Necessity of Proving Illegal Vote or Misconduct, Not Error</i>	<i>Necessity of Pre-election Challenge to Illegal Votes</i>	<i>Necessity of Proving Different Outcome</i>	<i>Availability of Relief</i>
WSDCC Motion to Dismiss/Transfer - Venue (1/20/05)		X			X				
WSDCC Motion to Strike Requested Relief (1/20/05)									X
Lincoln County Motion to Dismiss (1/21/05)		X			X				
Wahkiakum County Joinder to Motion to Dismiss (1/21/05)		X			X				
WSDCC Motion to Dismiss Causes (1/21/05)					X	X	X	X	
Klickitat Auditor Joinder in Motion to Dismiss/Strike Remedy (1/21/05)						X		X	X
Ferry County Motion to Dismiss (1/21/05)	X	X	X	X	X				X
Snohomish County Auditor's Motion to Dismiss (1/24/05)			X		X	X	X		
Pierce County Reply and Joinder in WSDCC Motions (1/31/05)		X	X		X			X	X

*Snohomish County withdrew its motion to dismiss, but the auditor has moved separately

EXHIBIT Q

FILED

JAN 12 2005

CHELAN COUNTY CLERK

ROLL #

SUPERIOR COURT OF WASHINGTON - CHELAN COUNTY

TIMOTHY BORDERS, ET AL.,)

Petitioner,)

v.)

KING COUNTY & DEAN)

LOGAN, ET AL.,)

Respondents.)

NO. 05 2 00027 3

ANSWER OF WALLA
WALLA COUNTY &
KAREN MARTIN
& Certificate of Mailing

COMES NOW THE RESPONDENT WALLA WALLA COUNTY and
KAREN MARTIN, ITS AUDITOR, by and through their attorney of record, James L.
Nagle, Prosecuting Attorney for Walla Walla County, and in Answer to the Petition
admit, deny and allege as follows:

1. Respondents Walla Walla County and Karen Martin, it's Auditor, admit
the allegations contained in parts I., II., III., and V. of the Petition.

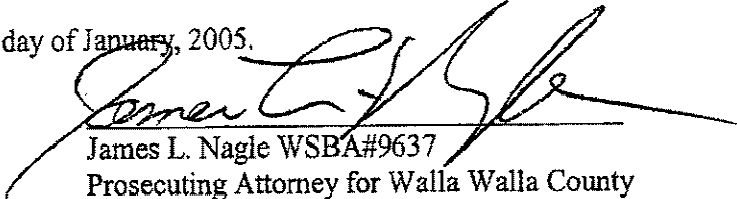
2. Respondents Walla Walla County and Karen Martin, it's Auditor, are
without sufficient knowledge or information to form a belief as to the truth of the
allegations contained in parts IV. and VI. of the Petition, and therefore deny the same.

Notice of Appearance &
Certificate of Mailing - P. 1

OFFICE OF THE PROSECUTING ATTORNEY
240 WEST ALDER, SUITE 201
WALLA WALLA, WA 99362-2807
PHONE (509) 527-3232

1
2
3 WHEREFORE, Respondents Walla Walla County and Karen Martin, it's
4 Auditor pray for such relief as the Court deems just and equitable.

5 Dated this 11th day of January, 2005.

6
7 
8 James L. Nagle WSBA#9637
9 Prosecuting Attorney for Walla Walla County
10 240 West Alder, Suite 201
11 Walla Walla WA 99362-2807
12 (509)527-3232

13 Certificate of Mailing

14 I Certify that I deposited an envelope in the United States Mail containing
15 a true and correct copy of the foregoing Answer addressed to Harry J. F. Korrell, the
16 Attorney for Petitioners, at 1501 Fourth Ave., Suite 2600, Seattle WA 98101-1688, on
17 the 11th day of January, 2005, Postage Prepaid.

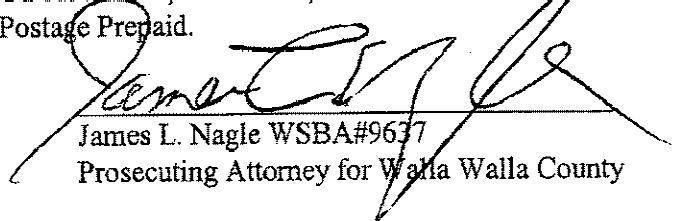
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20 James L. Nagle WSBA#9637
21 Prosecuting Attorney for Walla Walla County
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EXHIBIT R



William C. Rava
PHONE 206.359.6338
FAX 206.359.7338
EMAIL wrava@perkinscoie.com

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PHONE: 206.359.8000
FAX: 206.359.9000
www.perkinscoie.com

April 18, 2005

VIA FACSIMILE

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Foster Pepper & Shefelman PLLC
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Seattle, WA 98101-3299

Jeffrey T. Even, Esq.
Assistant Attorney General
Office of the Attorney General of Washington
Post Office Box 40100
Olympia, WA 98504-0100

**Re: Borders, et al. v. King County, et al.
Correction and Supplementation of WSDCC Discovery Responses**

Dear Counsel:

I write to correct and supplement WSDCC's Answers, Responses and Objections to the Secretary of State's Discovery Requests. In particular, in response to Interrogatory No. 20, which asked for a list of all lawful votes that had not been counted, WSDCC responded in part that "(c) King County wrongly rejected efforts to rehabilitate the allegedly mismatched signature on an absentee or provisional ballot envelope." In this answer, "efforts to rehabilitate" referred to WSDCC's unsuccessful attempt to have King County consider certain rehabilitation documents submitted to King County after its November 16, 2004, 4:30 p.m. cut-off, but before its certification of the election.

[15934-0006-000000/SL051080.176]

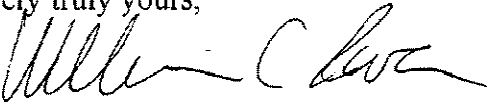
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SEATTLE • OLYMPIA • PHOENIX • PORTLAND • SAN FRANCISCO • SEATTLE • WASHINGTON, D.C.

Perkins Coie and Affiliates

Thomas Ahearne, Esq.
Jeffrey T. Even, Esq.
April 18, 2005
Page 2

In *McDonald v. Secretary of State*, 153 Wn.2d 201 (2004), however, the Washington Supreme Court essentially held that King County did not wrongfully reject such "efforts." WSDCC therefore supplements its answer to strike the above-quoted portion of its answer to Interrogatory No. 20.

Very truly yours,



William C. Rava

WCR:slb

cc: Counsel of Record

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THE HONORABLE JOHN E. BRIDGES

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CHELAN COUNTY

Timothy Borders et al.,

 Petitioners,

 v.

King County et al.,

 Respondents,

and

Washington State Democratic Central
Committee,

 Intervenor-Respondent.

NO. 05-2-00027-3

DECLARATION OF REBECCA S.
ENGRAV IN SUPPORT OF WSDCC'S
OPPOSITION TO PETITIONERS'
MOTION IN LIMINE TO EXCLUDE
EVIDENCE CONCERNING
PREVIOUSLY REJECTED BALLOTS
AND OTHER "OFFSETTING ERRORS"

I, REBECCA S. ENGRAV, state and declare as follows:

1. I am one of the attorneys representing Intervenor-Respondent Washington State Democratic Central Committee ("WSDCC") in this litigation. I have been responsible

DECLARATION OF REBECCA S. ENGRAV IN
SUPPORT OF WSDCC'S OPPOSITION TO
PETITIONERS' MOTION IN LIMINE TO EXCLUDE
EVIDENCE CONCERNING PREVIOUSLY
REJECTED BALLOTS AND OTHER "OFFSETTING
ERRORS" - 1
[SL051100.045]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

1 for communications with counties regarding documents and information requested by
2 WSDCC. I am over the age of 18, am competent to testify, and make this declaration based
3 on my personal knowledge and the files and records in this matter.
4

5
6 2. On January 27, 2005, WSDCC served its First Interrogatories and Requests
7 for Production on Benton County. At the time of service of those discovery requests,
8 Benton County was still a party to this action. The counties were dismissed from the action
9 on February 4, 2005.
10

11
12 3. On February 25, 2005, I spoke with Rea Culwell, Senior Deputy Prosecuting
13 Attorney in Benton County. Ms. Culwell stated that Benton County had already gathered
14 responsive documents and information for Petitioners' discovery requests, which it would
15 assemble and provide to Petitioners as well as WSDCC. Petitioners' discovery requested
16 some, but not all, of the information requested by WSDCC. Ms. Culwell stated that if
17 WSDCC required additional information after reviewing Benton County's responses to
18 Petitioners' discovery requests, I should contact her. Ms. Culwell also stated that I should
19 check in with her if we did not receive the promised information by March 7, 2005.
20

21 4. Benton County never provided responses to Petitioners' discovery requests. I
22 left multiple telephone messages for Ms. Culwell on March 8, March 29 and April 1
23 regarding this discovery and requesting to know the status of Benton County's responses, but
24 I did not receive any response from Ms. Culwell.
25

26 5. On April 7, 2005, Ms. Culwell informed me, despite her previous
27 representations, that Benton County would not provide responses to either Petitioners' or
28 WSDCC's discovery requests.
29

6. The next day, April 8, 2005, WSDCC issued a subpoena to Benton County noting the County's deposition for April 19, 2005. At Benton County's request, WSDCC agreed to reschedule the deposition to April 28, a date selected by Benton County.

Ms. Culwell then stated in an April 12, 2005 email that "no one" was available on April 28 and requested a further delay in the date of the deposition. Ultimately, Benton County agreed to schedule the deposition on April 25.

7. Attached to this declaration as Exhibit A is a true and correct copy of email communications between William C. Rava, counsel for WSDCC, and Ms. Culwell regarding the scheduling of Benton County's deposition and the chronology regarding its position on discovery.

SIGNED and DATED at Seattle, Washington this 20th day of April, 2005

s/ Rebecca S. Engrav

REBECCA S. ENGRAV

DECLARATION OF REBECCA S. ENGRAV IN
SUPPORT OF WSDCC'S OPPOSITION TO
PETITIONERS' MOTION IN LIMINE TO EXCLUDE
EVIDENCE CONCERNING PREVIOUSLY
REJECTED BALLOTS AND OTHER "OFFSETTING
ERRORS" - 3

[/SL051100.045]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

EXHIBIT A

-----Original Message-----

From: Rea Culwell [mailto:Rea_Culwell@co.benton.wa.us]

Sent: Wednesday, April 13, 2005 8:44 AM

To: Rava, William C.

Subject: RE: Borders v. King County -- Benton County deposition

Well, I discussed the 27th with the Auditor's office and - after fully understanding their time constraints and confirming that they understood that no copying was needed prior to the deposition, I proposed the 25th, all parties on our end are available. If the 25th does not work, Friday the 22 would be the best alternative. Please let me know asap. We both know judges don't like deciding these types of issues. I will only comment, out of necessity to document my opposition, to your bullet points that you are incorrect in many of the statements made.

Please call me at your earliest convenience or I might have to sick our new hiree on you - Sarah Villanueva!

Rea L. Culwell
Senior Deputy Prosecuting Attorney
Benton County Prosecuting Attorney's Office
7122 W. Okanogan Place
Mail Stop #G
Kennewick, WA 99336
509-735-3591
fax: 509-222-3705
rea.culwell@co.benton.wa.us
<http://www.co.benton.wa.us/>

This email, any and all attachments hereto, and all information contained and conveyed herein are intended as and deemed confidential attorney client privileged and/or work product information. If you have received this email in error, delete and destroy all electronic, hard copy and any other form immediately. It is illegal to intentionally intercept, endeavor to intercept or procure any other person to intercept or endeavor to intercept, any wire, oral or electronic communication.

>>> "Rava, William C." <WRava@perkinscoie.com> 4/13/2005 8:36:39 AM >>>

I look forward to seeing it. I will accept and expect email service; please copy my colleague Rebecca Engrav, with whom you have communicated.

Let me remind you of the following, which you will see in our opposition:

- The WSDCC served Benton County with discovery on January 27 when it was still a party to this case.
- You spoke with Rebecca Engrav on Feb. 26 and indicated that Benton County would answer Petitioners' discovery and that, after we had reviewed those answers, if we felt we still had questions that were unanswered we could contact you.
- Rebecca Engrav left messages for you on March 8, March 29 and April 1 to follow up on our discovery. You did not

4/20/2005

return or otherwise respond to any of those messages.

- Benton County opted out of this case (on Feb. 4) and therefore was not heard with respect to the case schedule on April 5.
- Ten weeks after service of the discovery and after stringing us along for months, on April 7 you informed the WSDCC that Benton County would not be responding to the WSDCC's discovery because you were too busy.
- On April 11 and 12 you placed multiple calls to at least Rebecca Engrav, Kevin Hamilton and myself asking us to move the deposition from April 19 to April 28 or 29.
- Only after we agreed to move the deposition to your preferred April 28 (and agreed to try to work with you on document production and agreed to forward a draft protective order (which we have already done)) did you inform me that that date (April 28) actually didn't work.
- Now you claim that no other date between now and April 30 is workable.

The WSDCC needs and is entitled to the discovery it seeks in a timely fashion. As the above chronology well-illustrates, the WSDCC has been more than reasonable -- we have been patient and accommodating with Benton County.

Will Rava
(206) 359-6338 direct
(206) 359-7338 fax

-----Original Message-----

From: Rea Culwell [mailto:Rea_Culwell@co.benton.wa.us]
Sent: Wednesday, April 13, 2005 8:15 AM
To: Rava, William C.
Subject: RE: Borders v. King County -- Benton County deposition

okay, I will file my motion to quash or amend today - sorry it didn't work out.
REA

Rea L. Culwell
Senior Deputy Prosecuting Attorney
Benton County Prosecuting Attorney's Office
7122 W. Okanogan Place
Mail Stop #G
Kennewick, WA 99336
509-735-3591
fax: 509-222-3705
rea.culwell@co.benton.wa.us
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>>> "Rava, William C." <WRava@perkinscoie.com> 4/13/2005 8:10:54 AM >>>

Thanks for checking on those dates. The week of May 2 is not workable -- among other things, there is a hearing on a number of significant, substantive motions on May 2 and a major disclosure date on May 6. We simply can't wait until that week to get the information from Benton to which we are entitled. The current parties to the case agreed to these dates at the April 5 hearing in light of the judge setting the May 23 trial date; the counties that opted out of the case were not present to raise concerns about the aggressive schedule.

Will Rava
(206) 359-6338 direct
(206) 359-7338 fax

4/20/2005

-----Original Message-----

From: Rea Culwell [mailto:Rea_Culwell@co.benton.wa.us]
Sent: Wednesday, April 13, 2005 7:55 AM
To: Rava, William C.
Subject: RE: Borders v. King County -- Benton County deposition

We have an election on the 26th, the reason for the 28th or 29th being the first days the elections personnel are available. The 18th poses the same problems as the 19th in that my clients can't get the documents prepared by the 19th. I will double check with the 27th, but I'm guessing election procedures make this day prohibitive. I will inquire as to the 27th, please reconsider the days indicated in my last email.

Thanks,
REA

Rea L. Culwell
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Benton County Prosecuting Attorney's Office
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>>> "Rava, William C." <WRava@perkinscoie.com> 4/12/2005 5:09:03 PM >>>

Because of the case schedule issued by the judge, we can't push the dep back to the week of May 2. We can work with you on alternative dates during the week of April 25 or April 18. Perhaps Wednesday, April 27?

Will Rava
(206) 359-6338 direct
(206) 359-7338 fax

-----Original Message-----

From: Rea Culwell [mailto:Rea_Culwell@co.benton.wa.us]
Sent: Tuesday, April 12, 2005 2:40 PM
To: Rava, William C.
Subject: RE: Borders v. King County -- Benton County deposition

I sure appreciate it, Thursday Friday are the only days that we don't have a DPA available.
REA

Rea L. Culwell
Senior Deputy Prosecuting Attorney
Benton County Prosecuting Attorney's Office
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4/20/2005

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>>> "Rava, William C." <WRava@perkinscoie.com> 4/12/2005 2:02:54 PM >>>
I'll check, and we will continue to attempt to accommodate your schedule. But but I can't make any promises. The judge set a very aggressive schedule, and the parties are bound by it.

Will Rava
(206) 359-6338 direct
(206) 359-7338 fax

-----Original Message-----

From: Rea Culwell [mailto:Rea_Culwell@co.benton.wa.us]
Sent: Tuesday, April 12, 2005 1:38 PM
To: Rava, William C.
Cc: tlines@comcast.net; davidbowman@dwt.com; Engrav, Rebecca S.
Subject: Re: Borders v. King County -- Benton County deposition

Will, I appreciate your attention in this matter. Unfortunately, we are going to be down one attorney come Monday and I am scheduled to lecture at the WAPA conference on the 28th. I conferred with my colleges and we have no one that can be present the 28th or 29th. I am requesting to move the deposition date to the following week, what days work for you?

Sorry for the inconvenience.
REA

Rea L. Culwell
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>>> "Rava, William C." <WRava@perkinscoie.com> 4/12/2005 12:23:16 PM >>>

Ms. Culwell,

This email serves to confirm our earlier conversation. We agreed to move the Benton County deposition from Tuesday, April 19 to Thursday, April 28 at 9:00 a.m. We will shortly forward an amended notice of deposition and get you a form protective order for your review. At your suggestion, I'm copying Travis Sines on this email; I've also copied David Bowman, who works with Mr. Sines representing petitioners in this matter.

Will

William C. Rava
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THE HONORABLE JOHN E. BRIDGES

SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR CHELAN COUNTY

Timothy Borders et al.,

Petitioners,

v.

King County et al.,

Respondents,

and

Washington State Democratic Central
Committee,

Intervenor-Respondent.

NO. 05-2-00027-3

[PROPOSED] ORDER DENYING
PETITIONERS' MOTION IN LIMINE
TO EXCLUDE EVIDENCE
CONCERNING PREVIOUSLY
REJECTED BALLOTS AND OTHER
"OFFSETTING ERRORS"

1 THIS MATTER comes before the Court on Petitioners' Motion in Limine to Exclude
2 Evidence Concerning Previously Rejected Ballots and Other "Offsetting Errors" (the
3 "Motion"). The Court having reviewed the Motion, Washington State Democratic Central
4 Committee's Opposition thereto, and any reply, and all declarations filed in support of or in
5 opposition to the Motion, and being fully advised in the premises, now, therefore, ORDERS
6 that:
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12 (1) Petitioners Motion in Limine to Exclude Evidence Concerning Previously
13 Rejected Ballots and Other "Offsetting Errors" is hereby DENIED.
14
15

16 ENTERED this ____ day of _____ 2005.
17
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20

21 _____
22 The Honorable John E. Bridges
23
24

25 Presented by:
26

SPEIDEL LAW FIRM

Russell J. Speidel, WSBA # 12838
7 North Wenatchee Avenue, Suite 600
Wenatchee, WA 98807

27 By /s/ Kevin J. Hamilton
28

29 Kevin J. Hamilton, WSBA # 15648
30 William C. Rava, WSBA # 29948
31 **PERKINS COIE LLP**
32 1201 Third Avenue, Suite 4800
33 Seattle, WA 98101-3099
34
35
36

JENNY A. DURKAN

Jenny A. Durkan, WSBA # 15751
c/o Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

37 Attorneys for Intervenor-Respondent
38 Washington State Democratic Central
39 Committee
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THE HONORABLE JOHN E. BRIDGES

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CHELAN COUNTY

Timothy Borders et al.,

Petitioners,

v.

King County et al.,

Respondents,

and

Washington State Democratic Central
Committee,

Intervenor-Respondent.

NO. 05-2-00027-3

CERTIFICATE OF SERVICE

The undersigned is a citizen of the United States and resident of the State of
Washington, is over the age of eighteen and is not a party to the within action.

CERTIFICATE OF SERVICE - 1

[15934-0006/SL051100.077]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

1 The following documents were caused to be served:

- 2
3 1. Washington State Democratic Central Committee's Opposition to Petitioners'
4 Motion in Limine to Exclude Evidence Concerning Previously Rejected
5 Ballots and Other "Offsetting Errors;"
6
7
8 2. Declaration of Williams C. Rava in Support of Washington. State Democratic
9 Central Committee's Opposition to Petitioners' Motion in Limine to Exclude
10 Evidence Concerning Previously Rejected Ballots and Other "Offsetting
11 Errors;"
12
13
14 3. Declaration of Rebecca Engrav in Support of Washington. State Democratic
15 Central Committee's Opposition to Petitioners' Motion in Limine to Exclude
16 Evidence Concerning Previously Rejected Ballots and Other "Offsetting
17 Errors;"
18
19
20 4. (Proposed) Order Denying Petitioners' Motion in Limine to Exclude
21 Evidence Concerning Previously Rejected Ballots and Other "Offsetting
22 Errors;"
23
24
25 5. Certificate of Service.
26
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32 These documents were served in the manner described below.
33
34
35

36 Thomas F. Ahearne	<input checked="" type="checkbox"/>	E-Service Via E-Filing.com
37 Foster Pepper & Shefelman PLLC	<input type="checkbox"/>	Via Electronic Mail
38 1111 Third Avenue, Suite 3400	<input type="checkbox"/>	Via Overnight Mail
39 Seattle, WA 98101-3299	<input type="checkbox"/>	Via U.S. Mail, 1 st Class, Postage
40 Email: ahearne@foster.com		Prepaid
41 Attorneys for Respondent Secretary of State	<input type="checkbox"/>	Via Facsimile
42 Sam Reed		
43		
44		
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46		
47		

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6 *Sam Reed*

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16 *Attorneys for Petitioners*

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32 *Attorneys for Respondent Chelan County*
33 *and Chelan County Auditor*

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☐ Via Facsimile

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7 *Auditor*

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16 *Attorneys for Respondent Lewis County*
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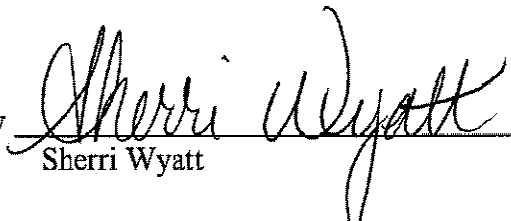
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20 Gordon Sivley
21 Michael C. Held
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25 Email: (gsivley@co.snohomish.wa.us;
26 mheld@co.snohomish.wa.us)
27 *Attorneys for Respondents Snohomish*
28 *County and Snohomish County Auditors*

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32 I declare under penalty of perjury that the foregoing is true and correct, and that this
33 certificate was executed in Seattle, Washington on April 20, 2005.

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By


Sherri Wyatt